
(1995) 10 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1784 of 1986

Bindeshwari Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 10(1), 10(2)
Constitution of India, 1950 — Article 226, 227

Citation : (1995) 10 PAT CK 0005

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : Abhay Kumar Sinha, Rajesh Kumar Singh, Rana Pratap Singh No. 2 and Anjani Kumar Sinha, for the Appellant; Basant Kumar Choudhary, for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Homchaudhuri, J.—During the pendency of this petition, an application was filed on 20.11.1992 by the Secretary of the Bihar Kisan Samitee on behalf of landless agricultural labourers, which is a peasants organisation, formed with the aims and objects to implement Land Reforms Laws and is championing the cause of the landless agricultural labourers, for being impleaded as intervener-Respondent in this petition. By order dated 23.2.93, the applications was ordered to be considered at the time of hearing. Learned Counsel for the Petitioners has objected to the prayer of allowing the application of the intervener. Learned Counsel for the Petitioners, however, does not dispute the contention of the learned Counsel for the intervener that was allowed to be impleaded to espouse the interest of the landless agricultural labourers in similar writ petitions, namely, C.W.J.C. No. 9836 of 1992 and C.W.J.C. No. 6323 of 1989. As such, I allow the application of the intervener to be impleaded as Respondent in this petition.

2. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus

Land) Act, 1961 (Bihar Act 12 of 1962), hereinafter mentioned as "the Act", although enacted in the 12th year of Republic of India, yet prolonged legal battles as regards fixation of surplus land for acquisition and distribution thereof to the landless agricultural labourers are continuing and avowed land reform has been stalled in this State. Disputes on the question of determination of units in a particular family and the classification of lands are the fertile grounds of the protracted litigations for years together.

3. With a view to determining the surplus land and acquisition thereof in the hands of the Petitioners under the provisions of the Act, a report was submitted by the Anchal Authorities, after verification and Ceiling Case No. 1103 of 1974-75 was registered and Petitioner No. 1 was directed to file objection against the draft statement. Petitioner No. 1 filed objection u/s 10(1) of the Act. As per draft statement, the Petitioners were allowed to retain land allowable for five units, whereas, according to Petitioner No. 1, there were 9 units in this family in view of the fact that he had eight sons and all the sons became major before the appointed date i.e. 9.9.1970. Besides, the Petitioner No. 1 claimed 4/10 units for four additional minors. The Petitioners also challenged the classification of the lands contending that there was no irrigational facility for cultivation of the lands in question up to 9.9.1970. In support of the age of Petitioners No. 7 and 8, report of the Civil Surgeon based on ossification test and other tests was submitted.

4. The Petitioner's objection having been rejected, they preferred an appeal. The appeal filed against the said order was also rejected. The Petitioners, thereafter, preferred a revision petition registered as Revision Case No. 333 of 1976 before the Board of Revenue, Bihar. The learned Member, Board of Revenue, by the judgment and order dated 12.4.1977 held that from the matriculation certificate of Udai Singh, it appeared that his age was 25 years on 27.4.1976. From the genealogical table filed by the Petitioners, the learned Member, Board of Revenue, found that three sons of Petitioner No. 1 were approximately of the same age and discarded the contention that the Petitioners Chitranjan and Shambhu were major on or before 9.9.1970. The learned Member of the Board of Revenue, however, accepted the contention of the Petitioners that Udai Pratap Singh was major on or before 9.9.1970 and was entitled to a separate unit. In respect of classification, the learned Member, Board of Revenue, held that the question has to be re-examined to find out the source of irrigation for proper classification of the land. The Petitioners, thereafter, approached this Court in a writ petition registered as C.W.J.C. No. 1104 of 1977. This Court, by the judgment passed on 4.11.1977, allowed the petition and quashed the orders, as contained in Annexures 2 and 3, so far as the question of majority of minority of Chitranjan Singh and Shambhu Singh were concerned, and remanded the case for reconsideration of the question of majority and/or minority of Chitranjan and Shambhu Singh and disposal of the objection on the said question in the light of the findings arrived at by this Court.

5. After the aforesaid judgment of this Court, the case was remanded to the D.C.L.R., Bhabhua and after remand, Ceiling Case was renumbered as Case No. 410 of 1975-76. But during the pendency of the case before the D.C.L.R., Bhabhua, the provision of the Act was amended in the year 1981 and consequently the earlier proceeding abated and a proceeding was started afresh from the inception u/s 10(1) of the Act. A Draft Statement was issued and the Petitioners filed an objection u/s 10(2) of the Act contending, inter alia, (i) the Petitioner No. 1, Bindeshwari Prasad Singh had two wives and had 8 sons, all of whom were majors on 9.9.1970 and, thus, the land-holders family are entitled to hold 9 units since there are 9 major members in the family, (ii) entitlement of some additional extra dependents and (iii) classification of the Land was wrong; inasmuch as land lying in Kudra Anchal measuring 130 acres 59 decimals should be classified as IVth category since there was no irrigational facilities; inasmuch as there was no canal or State boring or private pump on 9.9.1970 and the cultivation of the land was dependent on rainfall.

6. According to the Petitioners, after decision of the High Court, a report was called for by Respondent No. 4, which was submitted on 15.5.1979, but the said report was not considered although the said report supported the Petitioner's case that there existed no irrigational facilities. In support of their contention regarding the majority of Petitioners No. 7 and 8, the Petitioners filed the medical certificates of the Civil Surgeon and the certificate granted by the Head of the Department of Forensic Medicines of Patna Medical College and Hospital, based on classification test, as well as horoscope and affidavit.

7. Respondent No. 4, the Sub-Divisional Officer, Bhabhua, who was the D.C.L.R., Bhabhua, by order dated 28.1.1984, disposed of the objection ex-parte since the land-holders were absent on several dates. On the basis of the materials on record, he held that in the family of the land-holders, there are six majors and five minor members and the land-holders owned and held 207.05 of following category of lands:

1. First Class land ----- 12.82 acres

2. Second Class land ----- 38.59 acres

3. Third Class land ----- 159.21 acres

4. Fourth Class land ----- 1.41 acres

----- 207.05 acres

After converting the entire land into third grade land, the total area of the 3rd grade land was worked out to 228.72 acres. On the basis of the finding, the Sub-Divisional Officer held that the land-holders' family was entitled to retain 160 Acres of Class III land declared an area of 68.72 acres as surplus for acquisition. Against the said order, the Petitioners filed Ceiling Appeal No. 15 of 1984 before Respondent No. 3, the Collector, Rohtas at Sasaram. The Collector, Rohtas at

Sasaram, after hearing, dismissed the appeal by order dated 7.11.1984. The Petitioners, thereafter, preferred a revision petition before the Member, Board of Revenue and Case No. 203 of 1985 was registered and the learned Member, Board of Revenue, after hearing the parties, by order dated 25.2.1986, dismissed the revision petition. Feeling aggrieved, the Petitioner again approached this Court by the instant petition for the second time.

8. I have heard Mr. Abhay Kumar Singh, Learned Senior Counsel for the Petitioners and Mr. Basant Kumar Choudhary, Learned Counsel for the intervener-Respondent.

9. Learned Counsel for the Petitioners submitted that the impugned orders are vitiated for non-consideration of (i) the report of the Anchal Adhikari submitted on 15.5.1979, from which it was evident that there was no irrigational facility available to the land lying within Kudra Anchal measuring about 130.69 acres and (ii) the certificate of the Civil Surgeon based on ossification test, the horoscope and affidavits, the certificate granted by the Head of the Department of Forensic Medicines of Patna Medical College and Hospital, according to which, Petitioners No. 7 and 8, namely, Shambhu Singh and Chitranshan Singh, respectively, were about 25 years on 1.11.1977. The learned Member, Board of Revenue, has committed manifest errors of law in rejecting the said certificates on the ground that no Medical Officer was examined to prove the same.

10. Learned Counsel for the Petitioners submitted that when the Petitioners produced the horoscope, genealogical table and medical certificates and stated that Petitioners No. 6, 7 and 8 are majors, the onus lay on the State to prove that they are not majors. In support of the contention, learned Counsel for the Petitioners placed reliance on a decision in the case of Jagannath Prasad v. Syed Abdullah, reported in AIR 1918 P.C.35. Learned Counsel for the Petitioners further submitted that the authorities under the Act are not regular Courts as has been held by a Division Bench of this Court in the case of Junaid Khan Vs. The State of Bihar and Others and, as such, the learned Member, Board of Revenue, has erred in law in holding that the medical certificate in support of age of Petitioners No. 7 and 8 ought to have been proved before the authority as is done in a suit before a Court.

11. Learned Counsel for the intervener-Respondent, on the other hand, submitted that the intervener has stated on oath that the so-called report from the Anchal Adhikari on 15.5.1979, as contained in Annexure 4, was, in fact, a procured one and that a canal existed right from 1960 and 130 acres of land belonging to the Petitioners in Kudra Block have irrigational facility and, as such, there was no mistake in the classification of the land. Moreover, the Petitioners did not appear before the D.C.L.R. and produce any evidence in support of their objection and subsequently have taken all pleas just to delay acquisition and deprive the landless agricultural labourers, who are awaiting for a small piece of land since the proceeding was initiated long back in the year 1975 i.e. 20 years earlier. As regards the contention of the Petitioners regarding age of Petitioners

No. 7 and 8, learned Counsel for the intervener submitted that the certificates ought to have been proved by some one before the D.C.L.R. and there was no infirmity in the order of the learned Member, Board of Revenue for not placing reliance on the said certificates.

12. I have considered the submissions made by learned Counsel for the Petitioners and learned Counsel for the intervener-Respondent. In this case, undisputedly, the Petitioners did not appear before the D.C.L.R. on several dates to press their objection. The D.C.L.R., on the basis of the materials on record, passed the order dated 28.1.1984 and both the appellate and revisional authorities did not interfere with the order on perusal of the materials on record. The question whether Petitioners No. 7 and 8 are majors or minors on 9.9.1970 was decided by the D.C.L.R. on the basis of materials on record and that decision was affirmed by the appellate Court and the revisional Court. This Court, in exercise of jurisdiction under Articles 226 and 227 of the Constitution will not be justified in interfering with the concurrent findings of facts of the authority below unless the finding of fact is perverse and have caused grave failure of justice, the sheet-anchor of the Petitioners in support of their claim of majority of Petitioners No. 7 and 8, is the medical certificate of Civil Surgeon as well as the certificate granted by the Head of the Department of Forensic Medicines of Patna Medical College and Hospital, after Ossification test, in which, it was opined that Petitioners No. 7 and 8 were about 25 years on 1.11.1977. As such on 9.9.1970, they were below 18 or about 18 years. The ossification test cannot give the exact date of birth. In case, the age as found on 1.11.1977, on the basis of ossification test, is taken literally, even then Petitioners No. 7 and 8 did not complete 18 years on 9.9.1970. It is not the case of Petitioner No. 1 that Petitioners No. 7 and 8 were twin or that they and Uday Singh were born out of two wives on the same date and/or about at the same time. In this writ petition, no statement, on oath, has been made to support the contention of majority disclosing the date of birth of Petitioners No. 7 and 8. As such, it is difficult to accept that contention with certainty that Petitioners No. 7 and 8 were majors on 9.9.1970. I do not find that the findings of the Courts below about the age of Petitioners No. 7 and 8 on 9.9.1970 are perverse, which merit interference by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

13. The submission of the learned Counsel for the Petitioners that the onus lay on the State to prove that Petitioners No. 7 and 8 were not major on 9.9.1970, is not tenable and cannot be accepted. In my opinion, on the facts and circumstances of the case, it was the Petitioners' burden to establish that the three sons of Petitioner No. 1, namely, Shambhu Singh, Udai Singh and Charitar Singh were major on 9.9.1970.

As regards the claim of the Petitioners that there is no irrigational facilities available to the land owned and held by the Petitioners, no specific statement, on oath, has been made in this writ petition. The Petitioners did not appear before the D.C.L.R. The intervener-Respondent, on the other hand, has stated on oath

that there exists irrigational facilities, in respect of the land in question.

14. The D.C.L.R., on the basis of the materials on record, made classification of the lands owned and held by the Petitioners and determined the quantum of the land to be acquired and distributed to the landless as surplus. The said finding also cannot be said to be perverse. This Court in the exercise of writ jurisdiction cannot make microscopic examination of the legality or illegality of orders passed by the competent authorities. The appellate authority and the revisional authority did not interfere with the finding of the primary authority. This Court, in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India cannot sit as a Court of appeal to see whether the findings arrived at are correct or not. When the finding was arrived at on the basis of some materials on records, such findings merit no interference by this Court in the exercise of jurisdiction under Articles 226 and 227 of the Constitution.

15. For the reasons stated above, this petition is without merit and is dismissed. Ad-interim order dated 4.9.1986, staying operation of the impugned orders is vacated. I make no order as to cost.