
(1977) 01 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 2244 of 1976

Bishunpat Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-01-1977

Acts Referred:

Hindu Succession Act, 1956 — Section 2(g), 2(k)

Citation : (1978) 26 BLJR 337

Hon'ble Judges : Sarwar Ali, J;Gobind Mohan Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sarwar Ali and G.M. Misra, JJ.—A proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was started against Rama Devi widow of Bhikhari Singh. In that proceeding apart from Rama Devi the petitioners also filed their objections stating that they along with Rama Devi were each entitled to one unit. They also raised objection regarding classification of land. All the objections were disposed of by the Land Reforms Deputy Collector, Gaya. Under Annexure 3, they had been rejected and only one unit was given to Rama Devi. Against the order aforesaid there was appeal and revision which have been dismissed. The orders are contained in Annexures 2 and 1 respectively.

2. It is not in dispute that Bakhari Singh died in the year 1966 leaving behind his widow Rama Devi and four daughters. Petitioners 1 to 3 are sons of one of the daughters Lakshmi Devi, petitioners 4 and 5 are the daughter and son of the second daughter Bali Devi. Petitioners 6 and 7 are the 3rd and 4th daughters. The claim of the petitioners is that each of the seven petitioners and Rama Devi are entitled to one unit each. Thus the entire, family is entitled to 8 units. If that be the position taking in view the classification. the family does not hold land in excess of the ceiling area. In the counter-affidavit which has been filed in this case it is stated that the writ petitioners cannot be treated as land-holder and

they are not entitled to any unit. Rama Devi the widow of Bhikhari Singh was the only legal heir who had been in possession of the properties of Bhikhari Singh. It may be stated at the outset that the assertion that Rama Devi was the only heir of the Bhikhari Singh is clearly unsustainable in law. On the death of Bhikhari Singh all the four daughters and the widow jointly inherited the properties of Bhikhari Singh and all of them are the legal heirs of Bhikhari Singh.

3. The learned Member, Board of Revenue dealing with the matter has stated as follows:

Learned Government Pleader argued that the widow and the four daughters would no doubt be heirs of late Bhikhari Singh after his death in 1966, under the Hindu Succession Act but in respect of the claim made by the petitioners it would have to be shown that in order to be declared as landholders they satisfied the definition of land-holders as given in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act II of 1962). Learned Government Pleader urged that in the absence of any evidence that the petitioners actually held the land and were in cultivating possession, they would not be entitled to any ceiling unit.

The view of the learned Member, Board of Revenue, therefore, appears to be that it is necessary that land should be actually held and cultivated by a person otherwise he cannot be said to be a landholder within the meaning of the Act. This is not a correct appreciation of the provisions of the Act. Landholder has been defined in Section 2(g) of the Act which is as follows:

"Land-holder" means a family, as defined in Clause (ee) holding lands as raiyat or as under raiyat and includes a mortgagee of land with possession.

Raiyat has also been defined in Section 2(k) of the Act which is as follows:

"raiya" means primarily a person who has acquired a right to hold land for the purpose of cultivating by himself, or by members of his family or by servants or with aid of partners includes the successors-in-interest of persons who have acquired such a right and includes, in the District of Santhal Pargana's, a village headman in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908), applies a Mundari Khunkkattidar or a Bhuindhar.

It is, thus clear that actual physical possession of the land is not necessary to constitute a person as Raiyat. Raiyat as defined means a person holding land for the purpose of cultivating himself or by the members of his family. In the instant case Bhikhari Singh died in 1966 and after 1966 in view of the provisions of the Hindu Succession Act the daughters of Bhikhari Singh became Raiyats in respect of the land which was held by Bhikhari Singh as Raiyats. It is also to be noticed that if only the widow is in possession her possession is on behalf of the legal heirs of Bhikhari Singh unless there was ouster. There is no case of ouster pleaded or proved in this case. For all these reasons it is clear that the

petitioners and Rama Devi are land-holders in respect of the land which was the subject-matter of the proceedingsa. They are, therefore, entitled to eight units. If that be so it is not in dispute that they do not hold land in excess of the ceiling area as prescribed in the Act.

4. In the result we allow this application, quash Annexures 1, 2 and 3 and hold that the petitioners and Rama Devi do not hold lands in excess of Ceiling Area as prescribed in law. There will no order as to costs.