

(1998) 09 PAT CK 0067
In the Patna High Court
Case No : C.W.J.C. No. 8896 of 1997

Bishwanath Pandey and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(3), 15(1), 2, 32A

Citation : (1998) 3 PLJR 449

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Shashi Shekar Dwivedi and Ravi Shankar Dwivedi, for the Appellant; S.J. Rahman, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In this case, the Petitioners have challenged the orders as contained in Annexures-1 to 3, as well as, notification (Annexure-4) issued u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) passed in pursuance of Land Ceiling Case No. 19/73-74/. It appears that a land ceiling proceeding was initiated against the original landholder-Badloo Pandey and on his death, the same was continued in the name of Vi0dya Pandey. Initially, six units were allowed in favour of landholder and their family. After amendment of the Act and insertion of Section 32A of the Act, the proceeding was started afresh from the stage of Section 10 of the Act. The landholder-Vidya Pandey filed objection u/s 10(3) of the Act, by Which while he brought to the notice of the authorities, the private partition already taken place in the joint family, prayed to allow more units in favour of family of the landholder(s). However, such objection was rejected on 15.2.83 whereinafter notification u/s 15(1) of the Act was published on 31.3.83. The appeal preferred by Petitioners, was initially dismissed on 19.8.85 but in pursuance of an order passed in a revision case, the matter was remitted to the Collector for fresh disposal of appeal. The appellate authority again rejected the appeal by Impugned order dated 29.3.97 whereinafter the

revision case preferred by Petitioners was dismissed on the ground of limitation vide order dated 27.8.97.

2. In this case, the grievance of the Petitioners is with respect to grant of units in favour of landholders. According to them, they are entitled for about 37 units, there being separate landholders, who were major as on 9.9.70. In support of their contention, they have relied on genealogical table of original landholder Badloo Pandey as shown at Annexure-7 to the writ petition and the report as submitted vide letter No. 445 dated 9.11.77 by Circle Officer as contained in Annexure-8.

3. Generally, the question of allotment of separate unit in favour of landholder and to the member of its family are being determined by the authorities on the touch-stone of majority of a member as on the cut-off date (9.9.70), who allow separate units to a major member of family and additional units are allowed on the basis of total number of minor members of such family. In most of the cases in this State, it is being seen that in a proceeding against landholder not only units are allowed to a family landholder, with additional units for the minors, even the major sons and daughters are also allowed separate units, if found major as on 9.9.70. The question of grant of separate units fell for consideration before this Court and the Supreme Court a number of times. Initially certain decision was given by Full Bench of this Court in the case of Imamul Hasan Choudhary v. State of Bihar and Ors. (1982 B.B.C.J. 208 : 1982 P.L.J.R. 321), but subsequently, the matter fell for consideration before Full Bench of this Court in K.M. Zuberi's Case (1986 P.L.J.R. 67). In the said case, the learned Judges differed vertically on the question relating to grant of separate units in favour of major sons of a family governed by Mitakshara school of Hindu Law. While by majority judgment, It was held that the major son of a family governed by Mitakshara school, Is entitled to independent unit the minority view was otherwise for some other reasons. In the said case, Justice L.M. Sharma (as he then was) held that a major son of a Hindu governed by Mitakshara school of law does not get independent unit as son of his father whose unit area is being determined on the ground that he gets unit by reasons of his being independent. Subsequently, K.M. Zuberi's case fell for consideration before the Supreme Court (State of Bihar Vs. Shri K.M. Zuberi and others,). The Supreme Court in the said case affirmed the minority view of Justice Sharma as correct, as distinct from the view of majority of the Judges as was given by Full Bench of this Court. In the "said case of K.M. Zuberi, the Supreme Court held as follows;

An analysis of the aforesaid provisions unequivocally indicate that under the Act the ceiling area is required to be determined of a "family as defined in Section 2(ee) and, therefore, the landholder of whose ceiling going to be determined may be either a person, his or her spouse, and minor children. A major child whether belonging to a Hindu family or a Mohammedan or Christian is not conceived of ceiling area of A landholder. A major son of a Hindu can get an independent ceiling determined provided he is raiyat within the meaning of

Section 2(k) and has become a land-holder within the ambit of Section 2(g) but not as a successor to the land-holder whose ceiling is being determined on the ground that he has a right in the property by virtue of birth. In other words, under the Act no distinction has been maintained between Hindu, Mohammedan, Christian for determination of the ceiling area in the hands of the land-holder. The majority view expressed by Chief Justice as well as by Justice Agrawal approached the problem on incorrect premise as if under the Act the adult son of a land-holder governed by Mitakshara school of Hindu Law has been given an additional unit. Minority view of Justice L.M. Sharma is wholly correct one.

4. From the aforesaid finding of the Supreme Court and the provisions of law as enumerated under Ceiling Act including the definition of family as laid down u/s 2(ee) of Ceiling Act now it can safely be stated:

(a) The family as defined u/s 2(ee) of the Ceiling Act merely includes the landholder, his or her spouse and the minor children. Major son of other can be held to be a member of family of such landholder for the purpose of Ceiling Act.

(b) A major child whether belongs to a Hindu family or Mohammedan or Christian is not conceived of getting an additional unit while determining the ceiling area of a landholder.

(c) A major child can get an independent ceiling determined provided he/she is raiyat within the meaning of Section 2(k), and has become a landholder" within the ambit of Section 2(g), but not as a successor to the landholder whose ceiling is being determined by virtue of birth, if the property exclusively belonged to the landholder.

and (d) To determine whether a major child is raiyat within the meaning of Section 2(k) of the Act and has become a landholder within the ambit of Section 2(g), the authorities are required to determine the same taking into consideration the personal law as well as separate property i.e. belonged to such major child.

5. There may be cases where it may not be possible for the authorities to separate the lands in respect to individual raiyats, who are landholders themselves, by virtue of lack of clear separation/mutation. In such a case, though it is open to the authorities to proceed in a joint ceiling proceeding against different landholders, the ceiling unit is to be determined taking into consideration the aforesaid proposition as laid down by the Supreme Court, in respect to each of the separate landholders and their families.

6. In the present case, admittedly, the authorities have not determined the issues, as to whether individual major members of the family of the original landholder by virtue of the provisions of law are raiyats; separate landholders and thereby entitled to claim separate units for their respective families or not. Without discussion of aforesaid fact and determination of issue, the impugned orders were passed. It appears that while the authorities have considered the

raiya right of one branch of the landholder, the raiya right of the other members belonging to other branches of the original landholder has not been considered, though the entire property of the original landholder was the subject matter in the ceiling proceeding.

7. For the reasons aforesaid, I set aside the orders, as contained in Annexures-1, 2 and 3 and the consequential notification issued u/s 15(1) of the Ceiling Act (Annexure-4) and remit the case to the original authority/authority concerned for a decision afresh after notice and hearing the parties.

8. The writ petition stands disposed of with the aforementioned observations/directions.