

(1998) 10 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 4441 of 1987

Chandeshwar Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-10-1998

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(2), 10(3), 32B, 45B

Citation : (1998) 3 PLJR 783

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

Bench : Single Bench

Advocate : Prabhat Ranjan Singh and Ganesh Prasad Singh, for the Appellant;
Raghib Ahsan and K.A. Saddiqui, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In this case the Petitioner has challenged the order dated 21st August, 1987 passed by Additional Collector (Land Ceiling) Bettiah in Case No. 112/75-76 whereby and whereunder the Petitioner Chandeshwar Prasad, son of the original land holder was held to be a minor and was not allowed unit as was allowed earliet. The said impugned order was passed on reopening of the case u/s 45(B) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Ceiling Act for short)

2. A land ceiling proceeding being L..C. Case No. 112/75-76 was initiated against land holder Shri Guari Shankar Prasad father of the Petitioner in the said case. After submission of verification report draft notification u/s 10(2) was published. The land holder appeared and filed objection u/s 10(3) of the Act. After hearing the parties the Petitioner, son of the land holder, was held to be major and a separate Unit was allowed in his favour. The authority held that there was no surplus land and dropped the proceeding vide order dated 20th August, 1977.

3. The proceeding, thereafter, started from the stage of Section 10 in terms with Section 32(B) of the Act, after amendment made vide Act No. 55 of 1982. Again,

after taking into consideration the objection preferred by the land holder the Petitioner was held to be major and a separate Unit was allowed in his favour by order dated 11th January, 1984. The authority held, that there was no surplus land.

Thereafter no appeal nor any revision application was preferred by the State and a final notification was issued. Subsequently the Collector of the District ordered to re-open the case u/s 45(B) of the Act as, prima facie, it was found that the son of the land holder i.e. Petitioner Chandeshwar Prasad was not major as on 9.9.1970. In the verification report he was shown to be of about 17 years. The case was transferred to the Additional Collector (Land Ceiling) who after hearing the parties passed the impugned order on 21st of August 1970 and held the Petitioner a minor and not entitled for any separate Unit.

4. It will be evident from the impugned order dated 21 st of August, 1987 (Annexure 3) that the case of Petitioner was referred for verification of the age to a Medical Board. The report was submitted by one Dr. Madan Mohan Prasad of M.K.J. Hospital, Bettiah, which was based on X-ray Report. Not only the certificate relating to the age but also X-ray plate were also submitted before the authority According to the said medical report the Petitioner Chandeshwar Prasad was found to be about 36 years of age on 12.1.1987. Though the Petitioner was found to be a major as on 9.9.1970, the Additional C6I-lector (Land Ceiling) refused to hold the Petitioner a major, as the Medical Officer in his cross-examination observed that there may be some variation of age, as only the approximate age is given in the report.

5. In the counter affidavit the Respondents have taken similar plea that earlier orders were passed without any documentary evidence, so the case was re-opened and the impugned order was passed after taking into consideration the medical report and the statement of the Doctor. No reason has been shown therein as to why the report submitted by Medical Officer on the basis of X-ray report of the Petitioner was discarded by the authority.

6. Now it is a settled law that in absence of any specific evidence a medical report relating to age based on X-ray/ossification test should be treated as authentic and legal for determination of age of a person. None of the Medical Officer can state the exact age of a person on such test and there may be variation of age of 2 to 3 years, However, such variation cannot be relied upon to discard a medical report relating to age, if scientifically made and based on X-ray/ossification test.

7. As in the present case the Respondent Additional Collector (Land Ceiling) failed to give any reason to discard the medical report based on a medical test and Petitioner was found to be major by the Medical Board after scientific test, the impugned order cannot be held to be legal. Accordingly I set aside the impugned order dated 21st of August, 1987 as contained in Annexure 3 and hold that the Petitioner is entitled for a separate Unit as was earlier held by the

authorities, in view of the report submitted after medical test.

8. The writ petition is allowed. However, on the facts and circumstances of the case there shall be no order as to costs.