
(1996) 09 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 1945 of 1985

Deokinandan Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Citation : (1996) 09 PAT CK 0007

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition has been filed for quashing the order 11th December, 1984 passed by the Additional Member, Board of Revenue, Bihar, Patna in case No. 339 of 1984 and also the order dated 6th August, 1984 passed by the Collector, Gaya in Ceiling case No. 41 of 1983-84 and also the order dated 30th July, 1983/8th August 1983 in ceiling case No. 1976-77 passed by the Additional Collector Ceiling, Gaya. In the aforesaid ceiling proceeding 52.50 acres of Class III lands has been allotted to petitioner Nos. 1 and 2 and 37.88 1/4 acres has been declared as surplus land.

2. The case of the petitioners is that they filed an objection u/s 10(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1983 (hereinafter referred to as the said Act) against the draft statement in land ceiling case No. 70 of 1976-77/22 of 1977-78 u/s 10(2) of the said Act. In the said proceeding the learned Additional Collector, Gaya by his order dated 16th April, 1980 allowed 52.50 acres of Class III lands to the petitioners and declared 37.88 1/2 acres of land as surplus. Against the said order an appeal was filed and the Collector, Gaya by order dated 25th August, 1980 in ceiling case No. 1 of 1980-81 dismissed the appeal and affirmed the order of the Additional Collector, Gaya. Thereafter the revision application was filed by the petitioners before the Member, Board of Revenue Bihar, Patna and the Member, Board of Revenue by an order dated 3rd July, 1981 held that in view of the provisions of Section 32-A of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Ordinance 1981 (Ordinance No. 66 of 1981), the

revision application of the petitioners stood abated and the records were sent down to the Additional Collector, Gaya for start of the proceeding afresh from the stage of Section 10 of the said Act. Thereafter the matter was again taken up by the learned Additional Collector, Gaya who issued a fresh draft statement u/s 10(2) of the said Act and to that again an objection was filed by the petitioners u/s 10(3) of the said Act and the Additional Collector, Gaya considering the objection allotted 52.50 acres of Class III lands to the petitioners and declared 37.88 1/2 acres of land as surplus. Those orders of the Additional Collector and the Collector which were passed the challenged by the petitioners on the ground that petitioner No. 3 attained the majority on 9.9.1970 and was entitled to get one unit. In support of the aforesaid claim of majority, the petitioners produced ossification certificate granted on 19th September, 1980 by Dr. M.K. Sinha, school leaving certificate granted by the Headmaster of the School and an affidavit by the father. The classification of the land was also challenged and the contention of the petitioners is that the land in question are class IV and Class IV land there is no source of irrigation and the irrigation is totally dependent upon rain fall. The other ground of objection is that plots of land of Tribeni Singh (respondent No. 5) have been clubbed with the land of the petitioners. It appears that all these objections were considered by the Collector, Gaya in detail in his order dated 6th August 1984 which is at Annexure-2 to this writ petition. While considering the questions of age, the Collector came to the conclusion that the school leaving certificate which was produced had some alteration over the original entry and the appellant was given opportunity to file the matriculation certificate. It is admitted that the said matriculation certificate was not produced.

3. During the course of submission before this Court learned Counsel for the petitioners has not been able to advance any cogent ground for non-submission of the matriculation certificate. It has nowhere been stated in the writ petition that the recording of fact by the Collector was wrong, namely, that the Collector did not give any opportunity to produce the matriculation certificate nor is there any averment in the writ petition that petitioner No. 3 is not a matriculate. It is well known that matriculation certificate is a public document within the meaning of Section 35 of the Evidence Act. When an opportunity was given to the petitioners to produce the matriculation certificate by the Collector and that fact is not denied but the certificate was not produced, the obvious interference will be adverse against the petitioners. As noted above, it has not been contended in the writ petition that petitioner No. 3 is not a matriculate. Therefore, the best available evidence has not been produced and the evidence has not been produced, namely, the school leaving certificate contains alternation. Therefore, it cannot be said that there is any perversity in the approach of the Collector if he refuses to accept the school leaving certificate when the opportunity to produce the matriculation certificate was not availed of.

4. Learned Counsel for the petitioners has submitted before this Court has ossification test report was submitted. It is well known that the medical opinion about the age of a person is in the nature of an expert evidence and it is merely

to be treated as an opinion and it cannot conclusively clinch the issue. It is not the case of the petitioners that the matriculation certificate is not available in so far as petitioner No. 3 is concerned. The Court is, therefore, of the opinion that when the availability of the matriculation certificate is not disputed, its non-production before the authorities under the Act would raise an adverse inference against the petitioners within the meaning of Section 114 Illustration (g) of the Evidence Act.

5. Learned Counsel for the petitioners in this connection referred to an unreported judgment rendered by a Division Bench of this Court in the case of Ram Lagan Singh and Ors. v. State of Bihar and Ors. C.W.J.C. No. 942 of 1977 disposed of on 6.10.1977. In the said un-reported judgment in Ram Lagan Singh (supra) delivered on 6th October, 1977 by the Hon'ble Mr. Justice S. Sarwar Ali sitting with Hon'ble Mr. Justice Gobind Mohan Mishra, as their Lordship then were, came to the conclusion that if a medical certificate is produced the authority should satisfy themselves that the said certificate and the X-Ray plates relate to the persons in respect of whom such certificate is produced and for that purpose, if necessary, the authorities may summon the Doctor who has given the certificate. In the said judgment, the learned Judges also referred to Taylor's Principles and Practice of Medical Jurisprudence (12th Edition) and observed having regard to the facts of that case the contention of the petitioner in that case about the majority is supported there was to dispute that the petitioner Hira Singh was major on 9.9.1970. As such the medical certificate was sought to be produced as a corroborative piece of evidence. Subsequent evidence in the shape of school leaving certificate was on record. But here the school leaving certificate does not inspire any confidence and in view of the fact that the same contains alteration at the relevant place of entry. Therefore, this Court cannot hold that the authorities under the Act acted unreasonably or with any apparent perversity in refusing to accept the plea of majority of petitioner No. 3 when despite opportunity the matriculation certificate of petitioner No. 3 was produced and for such non-production no reason has been put forward by the petitioners anywhere. The authorities have, therefore, acted quite reasonably in refusing to take into consideration the medical certificate when their direction to produce the matriculation certificate was not carried out by the petitioners. Therefore, with profound respect to the learned Judges delivering the said Division Bench judgment in the case of Ram Lagan Singh (supra) this Court is of the view that the ratio of the said judgment will not apply here and the said judgment is distinguishable on facts.

6. In the matter of age to be decided by the medical evidence, the Supreme Court has observed that even in respect of determination of age by radiological evidence, correctness of the opinion in such case, given by the Doctor is notorious and in the case of *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, the learned Judges of the Supreme Court made the following observations:

It is notorious and one can take judicial notice that the margin of error in age notice that the margin of error in age ascertained by radiological examination is two years on either side.

7. From Halsbury's Laws of England 4th Edition Volume 17 para 42 it appears that where the determination of age is an issue, "stricter methods of proof may be required"

8. In the Privy Council judgment in the case of *Md. Syedol v. Vehoolyark* reported in 43 Indian Appeals page 246 it has been held that the age certified by the Doctor is not in truth a certificate but is merely an assertion of the opinion, (page 260 of the report).

9. In the case of *Kishori Lal Raghbir Dass v. The State* reported in AIR 1957 Punjab page 78 it has been stated that much reliance must not be placed on the table given in Modi's Medical Jurisprudence and Toxicology showing the age in years of the appearance and fusion of some of epiphyses as it merely indicates an average and is likely to vary in individual cases even of the same province because of the eccentricities of development and variation in climatic, dietetic, hereditary and other factors affecting the people of the different provinces of India. Therefore, this Court, with great respect, cannot place implicit reliance on the observation made in Talyor's Jurisprudence for ascertaining the age. In the said decision it has been held that an X-ray ossification may provide acceptable basis for determination of the age of an individual than the mere opinion of a medical expert, but it can by no means be infallible and accurate a test as to indicate the correct number of years and days the person has lived. Therefore the opinion of a medical expert based on such test cannot be recorded as conclusive.

10. On the question of clubbing the land of Tribeni Prasad Singh (respondent No. 5) with the land of the petitioners this Court finds that the Collector found on foot that the land in question, namely, the plots of land allegedly belonging to Tribeni Prasad Singh were in the possession of the land-holder. This is clear from the verification report given by the Anchal Adhikari who visited the village of the landholder. The verification report is a report within the meaning of Rule 8 of the report within the meaning of Rule 8 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963. Those rules having been framed u/s 45 of the said Act are statutory in character. Therefore, the said report given by the Anchal Adhikari under Rule 8 of the said Rules is statutory rule and is admissible to and relevant in the said proceeding before the Collector. Apart from that the question of possession is a question of fact and this Court sitting in writ jurisdiction cannot go into those questions specially when it is clear from the facts of the case that the respondent No. 5, even though has been made a party in the proceeding and has been served, has not entered appearance here or before the Collector or the authorities under the said Act never appeared and claimed that his land has been clubbed with the land of the petitioners. Therefore, the said contention also fails.

11. About the classification of land in question, it also appears from the order of the Collector that in respect of the said issue also there is- a report of the Anchal Adhikari to the effect that availability of the irrigation facility exists and as such said land can be classified as Class III land within the meaning of Section 4 of the said Act.

12. From a perusal of the provisions of Section 4 of the said Act it is clear that in the matters of classification of land, the Court should be very slow and cautious before interfering with the classification made by the authorities under the said Act. The land in question has been classified on the basis of availability of irrigational facilities and also the productive capacity of the land. Decisions on such pure questions of fact cannot normally be interfered in the writ jurisdiction unless there is a patent perversity on the part of the appropriate authority deciding such questions. In the instant case, this Court finds that the classification of land as Class III land has been decided by the Collector on the basis of a report of the Anchal Adhikari which is statutory in nature. That being the position, this Court cannot interfere with the findings made by the first Court and also the Collector, Gaya.

13. In the counter affidavit also it has been stated that the land has been rightly classified as Class III land on the basis of the report submitted by the Anchal Adhikari who made an on the spot enquiry in accordance with the provisions of the rules and reported that the facility of irrigation exists on the said land. The said averment made in paragraph 8 of the counter affidavit has not been denied by filing any rejoinder to the same.

14. For the reason aforesaid this Court is unable to interfere with the determination made by the authorities under the Act. This writ petition, therefore, is dismissed. But in the facts and circumstances of the case, there will be no order as to cost. All interim orders passed earlier are hereby vacated.