(1979) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jur. Case No. 946 of 1977

Gobardhan Goshala Rakhwari APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-03-1979

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 29(1)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 — Rule 8, 9

Citation : AIR 1980 Patna 69 : (1979) PLJR 462

Hon'ble Judges : Vishwanath Misra, J;B.P. Jha, J

Bench : Division Bench

Advocate : Sidheshwari Prasad Singh and Nagendra Prasad Singh, for the Appellant; Daya Nand Singh, Standing Counsel No. 4 and R.C. Sinha, Jr. Counsel, to Standing Counsel No. 4, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, Gobardhan Goshala Rakhwari, has filed this application under Articles 226 and 227 of the Constitution of India for quashing annexures 1, 3 and 4 to the writ application, Annexure-1 is the order of the Collector rejecting a petition made by the petitioner u/s 10(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be called "the Act"). Annexure-3 is the order of the Board of Revenue dismissing the appeal against the order of the Collector. Annexure-4 is the Gazette notification u/s 29 (1) (b) (v) of the Act.

2. The petitioner is a registered Goshala under the Societies Registration Act as well as under the Bihar Goshala Act, 1950. The petitioner is in possession of lands for the maintenance of Goshala. A Ceiling Case No. 2 of 1975-76 was initiated in the name of the petitioner under the Act. The petitioner submitted a return to say that the institution possessed 284 bighas of land. A draft statement u/s 10 of the Act was prepared which, however, shows that according to the

Revenue authorities the petitioner-Goshala was in possession of 307.07 acres of land. That every draft statement showed that the petitioner Goshala was allowed to retain 60.15 acres of land and the remaining portion measuring about 246.92 acres was declared excess. When the draft statement was served on the petitioner an objection u/s 10 (3) of the Act was filed giving the details of requirement of the Goshala and thereby objecting to the declaration of the excess land. The Collector of Madhubani rejected the objection as will appear from Annexure 1 to the application. Being aggrieved by that order the petitioner preferred an appeal u/s 30 of Act before the Board of Revenue which also was dismissed (vide Annex. 3). Annex. 4 as has been said above is a Gazette Notification which only shows that only 60.15 acres of land detailed therein was exempted from the operation of the Act.

3. The Act has fixed ceiling area for a "family" and according to Section 5 of the Act it is not lawful for a family to hold land in excess of ceiling area except as provided under this Act. This general law, however, does not apply in cases where lands are held by Universities, hospitals, orphanages or similar institutions because they do not come under the definition of "family", given in Section 2 (ee) of the Act. The Act, therefore, has provided for exempting these institutions from the operation of the Act but only to the extent of the land which would be notified for the purposes of exemption. This is provided for u/s 29 (1) (b) (v) of the Act which would run as follows:--

"29-(1) (a). The provisions of this Act shall not apply to (i)......

(b) The provisions of Sections 5 and 8 shall not apply to-

(v) Such extent of land held on the date of commencement of this Act by such public or charitable bodies or religious institutions of public nature running educational institutions hospitals, maternity homes and orphanages, as may be notified by the State Government in this behalf, so long as they continue as such."

It is clear from this that the land which will be notified under the above provisions will be exempted from the operation of the Act. In other words the institution will be permitted to retain only that land for it and the balance would be taken away by the State Government as excess land. What area of land would be notified under the provision quoted above depends upon the requirement of a different institution, and for ascertaining that Rules 8 and 9 of the Rules under the Act have been framed which envisage a regular inquiry in that regard. The manner of inquiry is also detailed in these rules. It has therefore, to be seen if the inquiry contemplated by Rules 8 and 9 has been done in the instant case or not. The petitioner''s main grievance is that absolutely no such inquiry was made in accordance with the requirements of the rule and the petitioner was not afforded any opportunity to lead evidence in respect of the exemption of the land claimed by the petitioner. A supplementary affidavit was filed in this case para 6 whereof reads as follows:--

"6. That no enquiry u/s 29 read with Rule 9 as to the requirements of the Goshala was made in presence of the authorities of the Goshala or after giving them proper and valid notice and they were never given opportunity to examine witnesses. There has been no compliance of Rules 8, 9 and 3 (7) of the Rules".

4. There is no counter-affidavit on this point and as such the affidavit of the petitioner has to be accepted as correct. Our attention has also been drawn to the order of the Collector (Annexure 1) which itself shows that at one stage the sub-divisional Officer, Madhubani, recommended exemption of 145.06 acres of land to this petitioner but later on that was reduced to 60.15 acres. Only when a regular inquiry in presence of the petitioner is held the Revenue Authorities may come to a conclusion about the real requirements of the Goshala. If sufficient lands are not spared for the Goshala it may even be fatal to the cattle. The land not required by the Goshala can also not be left with it. Of course in the garb of Goshala unnecessary and excess lands also may not be left so as to defeat the provisions of law. In such cases, therefore, actual necessity should be very thoroughly scrutinised in presence of the parties concerned. In view of the fact that the inquiry under Rules 8 and 9 of the Rules were not made before allowing the exemption u/s 29 (1) (b) (v) of the Act, the orders impugned have got to be quash-ed, and the case has to be sent back to the Collector for fresh inquiry in, accordance with law.

5. Before concluding it would not be out of place to say that great caution is required at the hands of the Revenue authorities while assessing the requirements of an institution like Goshala. If sufficient amount of land for pasturage is not left with a Goshala it will be much too detrimental to the necessity of the locality of the society which the Goshala serves. The importance of milch cattle for the maintenance of health of the public as also for the agricultural produce can never be minimised and it should always be the endeavour of the State Government to encourage such institutions as far as possible if the State Government themselves cannot establish any such institution for the advantage of the general public. In some of the big cities dairy farms are no doubt there but the majority of the population of Bihar resides in villages and, hence, for their advantage the importance of rural Go-shalas cannot be minimised.

6. Before parting with the judgment we want to say a few words about the importance of Goshala. Ordinarily we are of the opinion that if a Goshala supplies milk to the major portion of the locality then in that case such a Goshala after a proper enquiry should be totally exempted from the purview of the Act. Such Goshalas are beneficial to the society. The State Government should take-care towards such types of Goshalas as these Goshalas are performing the functions of supplying milk which the Government should have done. It is the duty of the State Government to protect the cause of the Goshalas. Cows are very essential to the Societies for maintaining health as well as for producing the agricultural produce. If one asks our opinion we shall say that in each Block of the State

there should be one Goshala maintained by the State Government which should supply milk to the people of the locality. Each Block should be supplied good semens to breed good cattle but it is a matter of great regret that Goshalas are not maintained at the Block level by the State Government. Only in big cities there is a dairy farming which is maintained by the State Government. That is not sufficient for the society as we know that the majority of the population in the State of Bihar resides in villages. If the villagers do not get the benefit of the milk of cow then the majority population is being deprived of such benefit. Therefore, the State Government should have special department for Goshalas apart from the Veterinary department to know the correct position of the Goshalas. The State Government should also encourage the public to open Goshalas at various levels and such encouragement should be given by the State Government to open such Goshalas but it is a matter of great regret that the State Government has not applied its mind to this aspect. We, therefore, suggest to the State Government to apply its mind for protection of cows as well as for establishing Goshalas at the Block level which will not only help the villagers in maintaining their good health but also in producing grains in the agricultural fields. With this observation we dispose of the matter.

7. In the result the petition is allowed and Annexures 1, 3 and 4 to the writ application are quashed. The case is remanded back to the Collector for fresh inquiry in accordance with law on the basis of the observations made above. Parties will bear their own costs. Let a copy of this judgment be sent to the Secretary to the Government of Bihar in the Department of Animal Husbandary, also.