

(1976) 12 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jur. Case No. 2319 of 1976

Gorelal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-1976

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 4

Citation : AIR 1977 Patna 232 : (1977) 10 PLJR 252

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

Bench : Division Bench

Advocate : K.K. Sinha and Mahendra Prasad Sinha, for the Appellant; Md. Khaleel, Govt. Pleader 3 and Y.V. Giri, Jr. Counsel to Govt. Pleader 3, for the Respondent

Final Decision : Allowed

Judgement

1. A proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was started against the petitioner. On the finding that the petitioner's lands; were mostly class I lands, 9.37 acres have been declared surplus lands, the total lands of the petitioner being 24.37 acres, out of which, according to the case of the State, 22.47 acres were class I lands. The petitioner, therefore, prays for the quashing of the impugned orders contained in Annexures 4, 5 and 6, being the orders of the Deputy Collector, Land Reforms, the Additional Collector and the Additional Member, Board of Revenue.

2. The case of the petitioner was that the petitioner is entitled to two units as he had adopted Madho Prasad Singh as his son in the year 1966. The case further is that there is error in classification of lands as the petitioner does not hold class I lands at all and his lands are either class III lands or class IV lands. There cannot be any dispute that if the petitioner succeeds in either of these two contentions, he does not hold land in excess of the ceiling area and the impugned orders

would be liable to be quashed.

3. So far as the first contention is concerned, it is not necessary to deal with this contention as in our view the petitioner succeeds on the second contention. After the petitioner filed his return a draft statement was served on him and he filed objection u/s 10 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as "the Act"). After the objection was filed it appears that in view of the claim of the petitioner that he did not hold class I land, the matter was referred to the Subdivisional Officer, Waterways, Kharagpur. According to the statement in the petition contained in paragraph 19, the report of the S.D.O., Waterways, was to the effect that the lands of the petitioner get irrigation for one crop only and it is only on rare occasion when there is excessive rains In any year that the tenants get water for the Rabi crop. A counter-affidavit has been filed on behalf of the State. In paragraph 20 of the counter-affidavit it is stated that the Sub-Divisional Officer aforesaid has rightly stated in his report that in the event of excessive rainfall the land in question also gets irrigation for Rabi crop. On this basis it is asserted in the counter-affidavit that the lands in question are class I lands. The learned Additional Member, Board of Revenue has taken the view that because of the possibility of availability of water in those years when there is excessive rain, the lands in question will be class I lands. In our view, the learned Additional Member was clearly in error in interpreting the provisions of Section 4 of the Act and in holding that any land of the petitioner was class I land. Section 4 (a) of the Act is as follows:--

"Fifteen acres, that is, equivalent to 6.0705 hectares of land, irrigated or capable of being irrigated by flow irrigation work or tube-wells or lift irrigation which are constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law and which provide or are capable of providing water for more than one season (hereinafter referred to as Class I land)." The expression used in the provision is "capable of providing water for more than one season". The expression "capable" has been used because the Legislature wanted to emphasise that even though a person may not utilise water that may be available by flow irrigation work etc., yet if those works were capable of providing irrigation for two seasons, then the land in question will come under Class I. The capability to provide irrigation must be regular capability year in and year out and not irregular or occasional capability. It should not, for instance, depend on the vagaries of nature. The expression must be interpreted to mean that the irrigation work mentioned in the said clause was capable of providing assured irrigation for more than one season. It is only when it was capable of so providing the irrigation that the sub-clause would apply. Where the assured irrigation was not possible for two seasons, the land irrigated even by flow irrigation work, tube-well etc. could not be classified as Class I land. In this view of the matter, the lands of the petitioner cannot be classified as class I lands and the view taken to the contrary by the learned Additional Member, Board of Revenue was on account of erroneous interpretation of Section 4 (a) of

the Act.

4. In the result, it is held that the petitioner does not hold land in excess of the ceiling area. This application is accordingly allowed and the orders contained in Annexures 4, 5 and 6 are quashed.