

(1996) 07 PAT CK 0017

In the Patna High Court

Case No : Letters Patent Appeal No. 62 of 1985

Harichandra Thakur and Another

APPELLANT

Vs

Anchal Adhikar and Others

RESPONDENT

Date of Decision : 04-07-1996

Acts Referred:

Citation : (1996) 2 BLJR 997

Hon'ble Judges : Sachchidanand Jha, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent of this Court is directed against the judgment and order dated 9.4.1985 passed by the learned single judge in C.W.J.C. No. 274 of 1980, whereby and whereunder the writ petition filed by the appellants has been dismissed. In the said writ petition, the appellants had, inter alia, prayed for issuance of a writ of certiorari for quashing the orders contained in Annexure-2, 6 and 8 of the writ petition.

2. The facts of this case lies in a very narrow compass. It may be borne in mind that, in the writ petition, there were three petitioners, namely, Jugal Kishore Thakur (Petitioner No. 1) his son Harichandra Thakur (petitioner No. 2) and Mostt. Gulab Devi (petitioner No. 3), while the instant appeal has been filed by Harichandra Thakur as appellant No. 1 and Mostt. Gulab Devi as appellant No. 2. The case of the writ petitioners, inter alia, was that the land in question, which was the subject matter of a proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the said Act"), belonged to these three persons having one-third share each. According to the petitioners, although petitioner No. 2 was major aged about 19 years, he was shown as minor aged about 10 years and no enquiry was ever made with regard to this age. It was further alleged that, after the draft statement was published, the petitioners came to know that there was interpolation in the first verification report showing the age of petitioner No. 2 as

12 years on 1.9.1974. It was also alleged in the writ petition that no notice was ever served on petitioner No. 2 who was legally entitled to one unit as he was major. The Additional Sub-Divisional Officer, by his order dated 8.7.1975, declared 3.96 acres of petitioner's land as surplus. The petitioners, thereafter, made a grievance before the Additional Sub-Divisional Officer, who, after entertaining the application and after calling for a report from the Circle Officer, came to a finding that appellant No. 1 (petitioner No. 2 in the writ petition) was aged 19 years and he was entitled to one unit vide his order dated 4.9.1976 (Annexure-5 to the writ petition). By the said order, the Additional Sub-divisional Officer rescinded his earlier order declaring the land as surplus. It was stated in the writ petition that the so-called judicial order dated 4.9.1976 was set aside by the Sub-divisional Officer by his order dated 16.8.1979 (Annexure-6 to the writ petition). The petitioners thereafter moved the Board of Revenue who refused to admit the revision application.

3. A counter-affidavit was filed on behalf of the respondent State stating, inter alia, that the writ petition as also the relief claimed therein were misconceived. Initially, no return was filed by the petitioners after the Gazette notification dated 31.5.1973. Later on, a notice was issued on 2.1.1974 to file return and on 13.2.1974, petitioner No. 2 submitted his return and, on verification, it was found that the total land held by petitioner No. 1 was 34.70 acres of Class III lands. On 6.7.1974, petitioner No. 1 was noticed to give the age of his son who was shown to be 10 years old on 6.7.1974, the date of verification, but petitioner No. 1 did not produce any material to prove the age of his son and, accordingly, a final order was passed on 8.7.1975 and, after allotting two units, 8.96 acres of land was found to be surplus. An objection was filed by petitioners 1 and 3 u/s 10 of the said Act which was rejected. It was further stated that, after complying all the formalities, final publication was made and the land was declared surplus which was followed by acquisition for its distribution.

4. Mr. S.S. Asghar Hussain, learned Counsel for the appellants, has assailed the judgment and order of the learned single Judge contending that the Case of the petitioners was not considered in its right perspective. The learned Counsel submitted that the order dated 4.9.1976 (Annexure-5 to the writ petition) was passed by the Additional Sub-Divisional Officer after hearing in presence of the parties. The said order has attained finality in absence of any appeal filed by the State and the same operates as res judicata between the appellants and the State Government in absence of any proof of fraud or collusion and is not vulnerable to any collateral challenge as regards its operation and effect. The learned Counsel further submitted that there was no power in any administrative authority to annul, modify or reduce once a judicial order is passed under the Act. The learned Counsel also submitted that appellant No. 1, son of the landholder, was rightly held to be entitled to one unit, being major on 9.9.1970 on the basis of various documents, including the medical certificate. With regard to the claim of appellant No. 2, it was submitted by the learned Counsel that the authority has committed an error of law depriving appellant No. 2 from separate

unit on an erroneous ground that his name did not appear in the Revenue records. Lastly, it was submitted by the learned Counsel that no illegality was committed by the Additional Sub-Divisional Officer in passing the order dated 4.9.1976 (Annexure-5 to the writ petition) allowing one unit to the appellant for the reason that no person can be deprived of or affected in his statutes and, with respect to his civil rights without due notice to him and a major being treated as a minor in a ceiling proceeding and denied notice, has every right to assert his major status. However, the learned Counsel, when an enquiry was made by me about the facts stated hereinbefore, very fairly accepted the correctness of the same. As stated above, the learned Counsel accepted that the notification dated 31.5.1973 was published by the State Government under the said Act calling upon the landholders to file their return. The land-holder of the instant case, namely, petitioner No. 1 Jugal Kishore Thakur, did not file his return. However, a notice was issued to petitioner No. 1 land-holder who, on receipt of the notice, filed his return. It is to be noted that in the said return, petitioner No. 1 did not claim any separate unit for his son, appellant No. 1, with obvious reason that he was a minor.

5. It appears from the counter-affidavit, which was not controverted by the petitioners, that, by an order dated 6.7.1974, the authority gave notice to the land-holder to submit the proof of the age of the son of petitioner No. 1 but the latter did not produce any material. Ultimately, a notice of draft statement as contemplated u/s 10(2) of the said Act was served upon the landholder, namely, Jugal Kishore Thakur (petitioner No. 1 in the writ petition), and Smt. Gulab Devi, appellant No. 2 in this appeal, and they jointly filed their objection. It is worth mentioning that appellant No. 1 (petitioner No. 2 in the writ petition), who is none else but the son of the land-holder, did not file any objection. The objection filed on behalf of petitioner No. 1 and 3 was heard and finally rejected by the Additional Sub-Divisional Officer. Consequently, the final publication u/s 10 of the said Act was made in the official Gazette on 31.3.1976 declaring the lands of petitioner No. 1 as surplus. After the final publication, no objection was ever filed by any person, including the writ petitioners and/or the appellants and then the possession over the surplus lands was taken and the lands were distributed in accordance with the provisions of the said Act. It was further admitted by Mr. S.S. Asghar Hussain, learned Counsel appearing for the appellants which is also evident from Annexure-5 to the writ petition that, after the ceiling proceeding was finally concluded by distributing the surplus lands, a belated application was filed on 25.8.1976 by appellant No. 1 Harichandra Thakur stating that he was major and no notice of the ceiling proceeding was given to him and, therefore, he claimed to be entitled to get one separate unit. The Additional Sub-divisional Officer, who entertained the application, passed the order on 4.9.1976 (Annexure 5 to the writ application) allowing the said application and declaring that appellant No. 1 was entitled to one unit.

6. Regard being had to the admitted facts stated herein-before, I am unable to accept the submission of the learned Counsel that the order of the Additional

Sub-divisional Officer is a judicial order and it could not have been set aside by the higher authority. On enquiry, the learned Counsel failed to satisfy me as to under what authority the Additional Sub-divisional Officer assumed the power under the said Act when the ceiling proceeding was finally concluded by the final publication and acquisition as also by distribution of the surplus land.

7. It is well settled that a proceeding can be re-opened u/s 45-B of the said Act but the Additional Sub-divisional Officer is neither the authority u/s 45-B nor is he vested with any power under any provision of the said Act to entertain the application at this stage. The learned single Judge has rightly held that, after the ceiling proceeding was concluded, it was not justified for the Additional Sub-divisional Officer to reopen the matter on a mere petition filed by appellant No. 1 who was none else but the son of the landholder and whose minority was subject to decision in the ceiling case. The learned single Judge further took notice of an important fact that it was not the case of the landholder father or his son appellant No. 1 that the father had any adverse interest against his son.

8. Having regard to the facts of the case and the discussion made hereinbefore, I am of the view that there is no infirmity in the judgment and order of the learned single Judge and, as such no case is made out for interference in this appeal.

9. In the result, there is no merit in this appeal and the same is dismissed. However, I shall make no order as to costs.

S.N. Jha, J.

I agree.