

(1981) 12 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3468 of 1980

Imamul Hassan Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-1981

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 2, 5

Citation : AIR 1982 Patna 89 : (1982) 30 BLJR 150 : (1982) PLJR 321

Hon'ble Judges : K.B.N. Singh, C.J; Prem Shankar Sahay, J; Birendra Prasad Sinha, J

Bench : Full Bench

Advocate : Mazhar Hussain and Arun Kumar Singh No. 2, for the Appellant; Chunnilal, Govt. Pleader No. 5 and R.C. Sinha, Jr. Counsel to Govt. Pleader No. 5, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Sinha, J.—The question for consideration in this case is whether a major son of a Muslim land-holder is entitled to a separate unit under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act").

2. A proceeding under the Act was started against the petitioner in Ceiling Case No. 113/73-74. A draft statement was published declaring 185.68 acres of land of Class III as belonging to the petitioner. Out of this, 160.68 acres were declared to be surplus and the petitioner was allowed to retain 25 acres only. The petitioner then filed an objection u/s 10(3) of the Act before the Land Reform Deputy Collector, Katihar. One of the objections was that he had a major son named Mohammad Naushad and he should also be allowed a separate unit. The learned Sub-divisional Officer, Katihar, by his order dated 27-11-1976, overruled the objections and held that the petitioner's son Mohammed Naushad was not major as on 9-9-1970. The petitioner thereupon preferred an appeal before the

Additional Collector, Katihar, which was numbered as Ceiling Appeal No. 607/79-80. The Additional Collector held that although the petitioner's son, Mohammed Naushad was major as on 9-9-1970, he was not entitled to a separate unit, as in Muslim Laws, the principle of coparcenery would not apply. The petitioner then filed a revision application before the Member, Board of Revenue, Bihar, which was registered and numbered as Revision Case No. 14 of 1980. The Additional Member, Board of Revenue, by resolution dated 10th Sept., 1980, dismissed the revision application holding that the Muslim Laws did not recognise any interest of the sons during the lifetime of the father and, therefore, Muslim major son was not entitled to a separate unit. The petitioner has filed this writ application challenging the orders contained in Annexures 2, 3 and 4 passed by the authorities referred to above and has, inter alia, claimed that a Muslim major son is also entitled for a separate unit under the Act.

3. While admitting this application the matter was referred to a Full Bench, in view of a Bench decision of this Court in *Shekh Abdul Aziz v. State of Bihar*, C. W. J. C. No. 202 of 1978, decided on 27-2-1980 by B. P. Jha and M. P. Varma, JJ.

4. Mr. Mazhar Hussain, learned counsel appearing on behalf of the petitioner, relying upon the above decision contended that every major son of a Muslim land-holder constitutes a family under the Ceiling Act and was, therefore, entitled to a separate unit. This was seriously resisted by the learned counsel appearing on behalf of the State, who submitted that in Muslim Law a son has no right in the property during the lifetime of his father and, therefore, he cannot become a land-holder within the meaning of the Act. Before proceeding to deal with the question raised in this case, I would like to refer to some of the provisions of the Act. Section 2 (ee) defines the word "family" which "means and includes a person his or her spouse and minor children". Section 2 (g) defines the word "land-holder". It reads as follows :--

"Land-holder" means a family, as defined in Clause (ee) holding land as raiyat or as under-raiyat and includes a mortgagee of land in possession."

Explanation : (i) A member of an undivided Hindu family having or being entitled to a share in land shall be deemed to be a landholder for the purposes of this Act as if there had been partition in the family immediately before the commencement of this Act.

(ii) In this clause, the word "person" includes any company, institution, trust, association or body of individuals whether incorporated or not. The word "Raiyat" has been defined in Section 2 (k) of the Act, which reads as follows :--

(k) "raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners, and includes also the successors-in-interest of persons who have acquired such a right and includes, in the district of Santhal Parganas, a village headman in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of

1908), applies a Mundari Khuntkatidar or a Bhuinhar."

Section 4 of the Act fixes ceiling area of land for one family consisting of not more than 5 members for the purposes of the Act. Section 5 creates a family unit, for the purposes of the Act. According to Section 5, it shall not be lawful for any family to hold, except as otherwise provided in this Act, land in excess of the ceiling area.

5. The question is whether a Muslim son can be said to be a raiyat during the lifetime of his father, for becoming a land-holder within the meaning of Section 2 (g) of the Act. For becoming a raiyat the person concerned must have a right to hold the land for the purposes of cultivation. Unlike Hindu Law, estate of a deceased Mohamedan if he has died intestate, devolves on his heirs at the moment of his death. Under the Mohamedan Law, birth right is not recognised. The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he, survived the ancestor. In the case of *Hasan Ali v. Nazo* ILR (1889) All 456, it was held that the "Mohamedan Law does not recognise any interest expectant on the death of another, and till that death occurs which by force of that law gives birth to the right as heir to the person entitled to it according to the rules of succession, he possesses no right at all." Unlike this, in Hindu Law a joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent. The essence of a coparcenary under the Mitakshara law is a unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. The interest of a coparcenary is fluctuating one and is capable of being enlarged or diminished in the event of deaths or births in the family as the case may be. It is only on partition that he becomes entitled to a definite share. Until a partition takes place the rights of each coparcener consist in a common possession and common enjoyment of the coparcenary property. The coparcenary property is held in collective ownership by all the coparceners in a quasi-corporate capacity.

6. Now again reverting to the provisions of the Act, it will be noticed that a landholder in order to constitute a family holds, the land in his own right and as a raiyat. As has been seen above a Muslim son or daughter does not have any right or interest in the property in the lifetime of his or her father. According to the Muslim Law, they acquire the right only in the event of the death of the father. It cannot, therefore, be held that a Muslim major son also becomes a landholder within the lifetime of his father within the meaning of this Act and constitutes a family as defined u/s 2 (g) of the Act. The distinction was noticed by the framers of the law while inserting the explanation of the definition of the

word "land-holder" in Section 2 (g) of the Act. A member of undivided Hindu family acquires a right by birth and becomes entitled to a share in the land. He is deemed to be land-holder for the purposes of the Act, whether or not a partition has taken place before the commencement of this Act. Mr. Chunnilal, learned Government Pleader appearing on behalf of the State, submitted that by successive amendments in the Act the meaning of the word "land-holder" was narrowed down, the idea being to lower down the ceiling area. By an amendment made in 1973 the word "family" was substituted in place of the word "person" in Section 2 (g) as well as in Section 5. He submitted that what was material was the word "land-holder" and not the word "family". Since a Muslim son or daughter could not become a land-holder in the lifetime of his or her father, it is apparent that he cannot claim a separate unit like a major son of a Hindu family.

7. In the case of Sk. Abdul Aziz, (C. W. 3. C. No. 202 of 1978) (Supra) it was held that "In Muslim family also sons and daughters are entitled to a separate unit in ceiling cases." No reasons have been assigned for giving such a decision and, in my opinion, that case has been wrongly decided.

8. The respondents-authorities were right in holding that a Muslim major son was not entitled to a separate unit and their findings are affirmed.

9. Learned counsel appearing on behalf of the petitioner also submitted, although half-heartedly, that the lands given to Kali Asthan and Idgah should have been excluded and that the lands should have been classified as Class IV or Class V instead of Class III. It appears that no registered document or any letter of acceptance from the Wakf Board had been filed in support of the claim that certain lands have been gifted to the Madrasa and Idgah even though sufficient time has been given to the petitioner for this purpose. It cannot be said that the respondents-authorities were wrong in rejecting such claim of the petitioner on this score. As regards the classification of the lands, the petitioner did not seem to have produced any document showing that the lands were of inferior quality and should have been classified as Class IV or V. On the other hand, there were various reports from the Revenue authorities that the lands were of Class III. The question seems to have been decided by the respondents-authorities after giving reasonable opportunities to the petitioner and looking into the various reports of the Revenue authorities and it is not possible for this Court to interfere with the findings of the Revenue authorities on this point.

10. The result is that this application fails and is accordingly, dismissed but without costs.

K.B.N. Singh, C.J.

11. I agree.

P.S. Sahay, J.

12. I also agree.