
(1999) 01 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 5402 of 1988

Indu Kumari @ Indu Devi and Others APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1), 9

Citation : (1999) 1 PLJR 875

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : S.S. Asgar Hussain, for the Appellant; B.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application the Petitioners have prayed for quashing of the orders dated 20.6.88, 26.8.85 and 3.9.83 passed by the Respondent Deputy Collector, Land Reforms, the Collector as well as the Additional Member, Board of Revenue, whereby 15.37 acres of land were declared surplus in a proceeding initiated under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, (hereinafter to be referred to as "the Act") which was registered as Case No. 70 of 1973-74. Copies of the orders are made Annexures-2, 3 and 4 respectively to this writ application. The case of the Petitioners in short is that the original land holder Shyam Narain Singh died in 1972 leaving behind his heirs and legal representatives, namely, his widow, two married daughters and a son. It is stated that admittedly the name of the family members were recorded in a Chak khatian in equal share. In a proceeding initiated under the provisions of the Act, notice was issued to the Petitioner Ingurbaso Kuer, widow of late Shyam Narain Singh, only and no notice was ever issued to other Petitioners, namely, the daughters and son. Pursuant to the notice the widow appeared and filed objections stating therein that the son, Bishwanath Singh is a major on the appointed date i.e. 9.9.70. In support

thereof a school certificate was produced stating the date of birth as 8:5.1951. It is further alleged that two married daughters alongwith one major son are also entitled to the share in the family property. The Respondent Deputy Collector, however, has allowed only one unit to Petitioner Ingurbaso Devi and rejected the claim of others. The Respondent D.C.L.R. has rejected the objection holding that the school certificate cannot be accepted as genuine in absence of the admission register which was earlier called for from the Head Master of the school in question. The claim of the other two major daughters has been rejected on the ground of being already married, and after so holding, declared the land to the extent of 15.37 acres surplus. The order passed by the Deputy Collector Land Reforms has been confirmed both by the appellate as well as revisional authority.

2. In this case a counter affidavit has been filed on behalf of the State Respondent, wherein, inter alia, it has been stated that the Petitioners No. 1 and 2 were the minor daughters on the appointed date 9.9.70 and as such they are not entitled to separate unit. So far the name of the Petitioner No. 4 the son of the objector is concerned, it is stated that the certificate produced by him cannot be accepted as genuine since the admission register was not produced by the concerned Head Master. However, it is admitted that the notice was issued to the wife of late Shyam Narain Singh only and no notice was issued to other members of his family as they were minors on the appointed date.

3. The learned Counsel for the Petitioners has challenged the orders of the courts below and submits that Anchal Adhikari, Itarhi, pursuant to the direction of the Respondent D.C.L.R., had made enquiry on the spot and had found the son major on the appointed date being more than 19 years of age. He further found the two married daughters were major and finally concluded that there are two major units in the family namely the objector herself and her son. He has further opined that as per the school leaving certificate the son of the objector is major one. Accordingly, it is submitted that the Respondent authority without any material available on the record has held the son of the objector being minor ignoring the certificate produced by the Petitioners as well as the verification report submitted by the Anchal Adhikari. It is submitted that even if two units are allowed to the family, no excess land is left to the family of the objector. In this case, as stated above, the Petitioners have produced the school leaving certificate showing the age of the Petitioner in support of their case and on that basis the Anchal Adhikari has found him major. That apart his son personally appeared before him in course of enquiry. There was absolutely no material before the Respondent authority to come to the conclusion that her son was minor on the appointed date. While passing the impugned orders the Respondent authorities have completely ignored the materials available on the record including the enquiry report and have recorded the finding which is based on no evidence on the point of minority of Petitioner No. 4. In case of any doubt regarding the age, Respondent authority ought to have referred the Petitioner No. 4 for medical examination by the Medical Board. That has not been done. The Respondent authority could have relied upon the certificate issued by the

Petitioner as well as the report submitted by the Anchal Adhikari in absence of the contrary evidence adduced by the Respondent State.

4. After having heard the learned Counsel for the parties and going through the materials available on record and on the facts and circumstances of this case, I am of the view that the objector is entitled for two units; one for herself and other for her son, Petitioner No. 4. Accordingly, the orders dated 20.6.88, 26.8.85 and 3.9.83 passed by the Deputy Collector Land Reforms, the Collector as well as the Addl. Member, Board of Revenue, are hereby quashed and the Respondent Collector is directed to recalculate the land allowing two units of the objector with option on basis of Section 9 of the Act, if and when necessary and, accordingly, issue final notification u/s 15(1) of the Act. This writ application is, accordingly, allowed to the extent indicated above. No cost.