
(1985) 02 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No's. 541, 584, 585, 588 to 591, 596 and 597 of 1979

Jadunandan Pd. Sahu and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-02-1985

Acts Referred:

Citation : (1985) PLJR 743

Hon'ble Judges : Bart Lal Agrawal, J

Bench : Single Bench

Advocate : Ram Chandra Sinha, Binod Krishna Jha and Ajit Kent Sharan, for the Appellant; C.K. Sinha, G.P. 1 with Balmukund Pd. Sinha, (in 541/79), A.K. Sinha (in 584/79), Gajendra Narain (in 385/79), Ram Krishna Pd. (in 588/79), C.S. Pd. (in 589/79), Smt. Kusum Lata Sinha (in 590/79), S.N. Pd. (in 591/79), Ram Krishna Singh (in 596/79) and Ishwari Singh (in 597/79), for the Respondent

Judgement

Bart Lal Agrawal, J.—This batch of nine applications is being disposed of herewith as they arise out of proceedings under the Ceiling Act. The estate in the se cases is one of Ram Sewak Sahu with some other lands claimed by three outsiders to the family. This Ram Sewak Sahu is said to have died on 1.10.1959 leaving behind five sons, a daughter and a widow. According to the case of the petitioners a family arrangement was arrived at between the members of the coparcener and a memorandum of the family arrangement was prepared according to which the land owned by the family above 466 acres was distributed between the different members of the family, mentioned above. In 1976 the land ceiling proceeding was started by the Additional Collector, Bhagalpur. Objections were filed by all the petitioners but he, by his order dated 24.11.1977 (Annexure-1), held the petitioners to be entitled to eight units only rejecting the case of the family arrangement set up by them. An appeal before the Board of Revenue by all the land holders also failed and was dismissed by the Additional Members of Board of Revenue on 29.8.1978 (Annexure-2). It may be mentioned that out of the nine applications only six relate to the family members of the said

Ram Sewak Sahu, namely, his four sons, a daughter and the widow. The three writ applications being C.W.J.C. Nos. 589, 596 and 597 of 1979 are by the outsiders who had also appeared in the proceedings and filed objections to the tagging of the lands standing in their names. It has been found by the Revenue Authorities that the writ petitioners of these three cases are Benamidar of the family of Jadu Nandan Prasad Sahu, the eldest son of Ram sewak Sahu (the writ petitioner of C.W.J.C. 541/1979).

2. Mr. Ramchandra Prasad Sinha, learned counsel for the petitioners, has pressed into service two legal positions. Firstly, he placed reliance on the Full Bench decision of this Court in the case of Harendra Prasad Singh v. State of Bihar and another (1984 Patna Law Journal Report 908) where a question was raised as to whether the Revenue Authority was obliged to proceed afresh after coming into force of Section 32B of the Ceiling Act and where a notification has been published under the old section 11(1), would it not amount to ignoring the scheme of section 32B. The learned Government Pleader No. 1 sought to distinguish this decision. He relied upon the following observations made in paragraph 6; quoted below:

To give effect and content to these changes, it was, therefore, laid down in unmistakable terms by virtue of sections 32A and 32B that the surplus area would be determined in accordance therewith from the date of the enforcement of the amending Act.

It has further been pointedly taken note on the basis of section 32A that only those appeals, revisions, review or reference which are pending before the authority on 9th April, 1981 would abate and the Collector shall proceed with those cases afresh in accordance with the amended provisions of section 10 of the Act.

3. Mr. Ram Chandra Prasad Sinha, however, contends that although the cases of the petitioners might not be pending before the Revenue authority on the relevant date but inasmuch as the final publication u/s 11(1) had not been made till the relevant amendment, that renders the order in law non-est and would be covered by the third question posed by the learned Chief Justice who delivered the judgment in the Full Bench. I do not feel it necessary to go into any detailed discussion of this question for the view that I take in this matter. Reading the two orders of the first authority and of the appellate authority, referred to. above, I find that the question of Farzi has been considered in a very slipshod method. The area involved in these cases was quite large and, therefore, the matter requires a deeper consideration. None of the ingredients of Benami save and except of possession, that also on a report of the Karamchari, has been referred to. The cases of the three Chaurasia writ petitioners on this ground alone have got to succeed and allowed. Since the cases of the lands of the other landholders, namely, the Sahu family and these Chaurasia had been jumbled up together and no separate enquiry had been made by the Revenue authorities, I think it desirable that the whole matter should be examined afresh in a water

tight compartment. I would, accordingly, allow these applications and remit the matters back to the Additional Collector, Bhagalpur, for fresh decision in accordance with law.