

(1979) 05 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 581, 652, 660, 661 and 800 of 1979

Jaimangal Singh and Another and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-1979

Acts Referred:

Citation : (1989) 37 BLJR 453

Hon'ble Judges : Sarwar Ali, Acting C.J.; B.S. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sarwar Ali, A.C.J. and B.S. Sinha, J.—In this application the orders contained in Annexures 5, 6 and 8 are under challenge. These are orders passed by the Additional Collector, Collector and the Additional Member, Board of Revenue, under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter referred to as "the Act". The authorities have held that the family has about 161 acres of land as surplus.

2. Learned counsel for the petitioner has raised four points during the course of argument. It is contended-

(a) that petitioner No. 2 who was major on the appointed day has been treated to be minor;

(b) that the classification of land is not correct and not based on any cogent materials;

(c) that certain transfers in favour of the transferees which were legal and valid transfers have been annulled or ignored. This could not be done;

(d) Option should have been given to the landlords to choose lands proposed to be retained by them.

3. So far as the first contention is concerned, the petitioners relied in support of

their case that petitioner No. 2 was major on the medical certificate issued by Dr. R.N. Sinha of M.J.K. Hospital, Bettiah. They also relied upon the village register of the Gram Panchayat. As against there the authorities have relied on an anonymous letter in which it was stated that petitioner No. 2 was a student or had recently been a student of a school. It further appears that some enquiry was made from the teachers concerned. But neither the person making the enquiry nor the teachers have been examined in the proceeding. In view of these circumstances if the authorities did not feel that the medical certificate and the village register were sufficient to prove the case they should have required the petitioners to produce the opinion of expert in forensic medicine. Only on the basis of the enquiry, which was made presumably behind the back of the petitioners, no decision could be arrived at. It would, therefore, appear that it is a fit case where there should be re-examination of the question whether petitioner No. 2 was major on the relevant date.

4. So far as the transfers are concerned, the main ground for rejecting the transfers is the Anchal Report. We have already decided in a number of cases that these reports are not evidence by themselves and if any contentious question is raised before the authority, the person making the report should be examined. It would thus appear that the transfers have been annulled on insufficient materials and without proper enquiry. In several cases we have already pointed out that in cases of this nature the crucial question is as to who is in possession of the property concerned. That question can only be decided on the basis of evidence that is led by the parties in the proceeding. The question whether the transfers are valid or not also requires reconsideration. Learned counsel for the State pointed out that some of the transfers were made after 9-9-70. So far as these transfers are concerned, the legal position has been explained by this Court in the case of *Hira Lal Sah and Ors. v. The State of Bihar and Ors.* 1977 BBCJ 717

5. So far as the question of classification is concerned, learned counsel contended that the report which has been relied upon does not disclose the source of irrigation. Since we are remanding the case on the other two points, the question of classification should also be redetermined.

6. After the authorities come to the conclusion on remand as to what is the excess area held by the land-holders they should give option to the land-holders to choose the lands proposed to be retained by them.

7. We accordingly allow this application and quash Annexures 5, 6 and 8 and direct that the objection of the petitioners should be reheard and disposed of in accordance with law. The parties including the State will be at liberty to adduce evidence before the authority concerned, namely, the Additional Collector, in support of their respective cases. We fix 2nd July, 1979, as the date on which the petitioners must appear before the Additional Collector. On that date another date will be fixed for hearing of objection and disposal thereof in accordance with law. In the circumstances, we make no order as to costs.

C.W.J.C. Nos. 652, 660, 661 and 800 of 1979

8. The petitioners in these writ applications are transferees from Jaimangal Singh, petitioner No. 1 in C.W.J.C. No. 581 of 1979. There will be redetermination of their objections also in the light of the observations made above. These petitioners should also appear before the Additional Collector on the 2nd of July, 1979.

9. We accordingly allow these applications and quash Annexures 2, 3 and 4 so far as C.W.J.C. Nos. 660 and 661 of 1979 are concerned and Annexures 2, 3, 4 and 5 so far as C.W.J.C. Nos. 652 and 800 of 1979 are concerned, In the circumstances, we make no order as to costs.