

(1995) 03 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 974 of 1984

Kashi Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973 — Section 4
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(3), 11, 15, 4, 5

Citation : (1995) 03 PAT CK 0048

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Advocate : Pradyumna Narayan, Arun Kumar Singh and Pronoti Singh, for the Appellant; Birendra Pd. Verma and Akhilesh Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

B.N. Agrawal, J.—This writ application has been filed for quashing order, contained in Annexure 3, whereby various objections filed on behalf of the land holders u/s 10(3) of the Bihar Land Reforms, (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as "Act") have been rejected, and orders passed by the Appellate Authority and the Revisional Authority, contained in Annexures 2 and 1, respectively, by which the order passed by the original authority has been affirmed.

2. Undisputedly, heirs of Feku Singh held 252 acres and odd decimals of lands, out of which 68 acres and odd decimals of lands have been declared surplus. After rejecting the objections final publication u/s 11 of the Act has been already made. The land holders have been granted five units besides 1/10th for one minor member. In this writ application, impugned orders have been attacked on four grounds. Firstly, it has been submitted that the authorities have committed an error in holding that the lands belonging to the land holders are in class IV, while, as a matter of fact, all the lands held by the land holders come within

Class VI. In the order passed by the original authority, contained in Annexure 3, it has been mentioned that the disputed lands are situated at the foot of Camoor hills but full of stones and no irrigation facility is available to any of the lands. It has been further stated that as irrigation facility is not available to any of the lands, the same would fall within class IV. In the appellate order also, it has been mentioned that the lands are lying at the foot of the hills. The Revisional Authority has mentioned in the order that the lands in question are at the foot of hills, that is, in valley, and are of capable of being cultivated.

3. In this connection, it will be necessary to refer to Section 4(f) of the Act, which relates to Class VI, and the same reads thus:

4. (f). Forty-five acres equivalent to 18.211 hectares of hilly, sandy, forest land, even land perennially, submerged under water or other kind of land none of which yield paddy, rabi or cash crops (hereinafter referred to as class VI land) (emphasis added)

From the aforesaid provision, it would appear that hilly lands, sandy lands, forest lands, even land perennially submerged under water or any other kind of land none of which yield paddy, rabi or cash crops will come within class VI. On the finding recorded by the authorities, I have no difficulty in holding that the disputed lands fall within the expression "hilly land" and do not come in any other category of lands enumerated in this Sub-section. But, to bring the land within the ambit of Class VI two conditions have to be fulfilled—firstly, that the land falls within any of the types of land mentioned in this Sub-section and secondly, the same does not yield paddy rabi or cash crops. My reasons for saying that these two pre-requisites are there for bringing the land within the lands in class VI are enumerated hereunder. The expression "none of which yield paddy, rabi or cash crops", in my view, connotes in relation to all the five types of lands mentioned in this Sub-section as referred to above because of the language used in the statute. It cannot be said that the second pre-requisite is in relation to "other kind of land" and not any of the other four types of lands. The expression "none of which yield paddy, rabi or cash crops" is not conjunctive with only "any other kind of land", but the same co-relates to the other four types of lands as well. The expression used is "none of which yield paddy, rabi or cash crops."

4. The expression "none" has been purposely used by the legislature to make the expression "does not yield paddy, rabi or cash crop" applicable to all the five types, of lands mentioned in this Sub-section. If the legislature would have intended to make the expression, "does not yield paddy, rabi a cash crops", applicable to only "any other kind of land", the expression "none" would not have been mentioned in the Statute and it could have been simply said in the last portion of the Statute "or other kind of land which does not yield paddy, rabi or cash crops". My view is further reinforced by this fact that the expression used is "other kind of land" and not "other kind of lands". It is basic principle of grammar that the expression "none" can be used only in relation to plural and in no case

to singular. Otherwisa grammatically, it would be committing a blunder, which is generally not expected from a legislature. Giving such an interpretation would lead to absurdity.

5. It is well settled that the legislature does not use redundant words. Basic principle of interpretation is where there is no ambiguity in a Statute its literal interpretation should be given unless the same leads to absurdity or would make the same invalid under any law. Even if there is any ambiguity in a Statute, it should be interpreted in such a manner so that without causing any violence to its language, the interpretation may be reasonable or/and meaningful. In my view, in the present case for the reasons setforth above, the language of the Statute is plain and simple, there is no ambiguity at all therein and the only reasonable interpretation, which is possible, is that the expression "none of which yield paddy, rabi or cash crops" is applicable to each of five types of lands enumerated in this Sub-section.

6. In view of the foregoing discussions, it becomes clear that the authorities were obliged to consider and record a finding as to whether the disputed lands, which were found by the authorities to be "hilly" yielded paddy, rabi or cash crops on the appointed day, that is, 9.9.1970, but as no such finding has been recorded nor is there any evidence, the finding recorded by the authorities on the question of classification becomes vitiated in law and the case is fit to be remanded to the original authority for considering the question of classification and record a finding after giving opportunity of adducing evidence to the parties as to whether on 9.9.1970, paddy, rabi or cash crops used to be grown or not. If he comes to the conclusion that in none of the disputed lands aforesaid crops used to be grown or in some of it no such crop used to be grown on the appointed day, so much of the lands shall be declared as Class VI otherwise it will fall in Class IV.

7. Turning now to second ground of attack, it may be stated that according to the Petitioners, authorities were not justified in granting only 1/10th for one minor, but they should have granted up to a maximum of 1/2 unit as number of minors in the family was nine. It has not been decided as to how many minors were there in the family on 9.9.1970. The Petitioners have filed a genealogical table, contained in Annexure 4, in which names of eight minors have been stated, but their age has not been described therein. It is not known when they were born. If they were born after 9.9.1970 question of considering their cases does not arise. About two other persons, namely, Hema Singh and Deppak Kumar, their age has been given as 17 years and 15 years, respectively, in the genealogical table. It is not known with reference to what date their age has been given-whether the same has been given with reference to 9.9.1970 or any date thereafter. In my view, on this question also the matter is required to be remanded to the original authority which shall decide the same after giving opportunity to the parties to adduce evidence.

8. Learned Counsel appearing on behalf of the Petitioners next submitted that Kamta Singh died in the year 1972 and his interest devolved upon his heirs,

namely, widow Prem Jota Kuer, son Kesho "Singh and two daughters, Bimla Devi and Rita Devi. So far Prem Jota Kuer is concerned, she has been granted unit along with her husband and so far Kesho Singh is concerned, he has been granted separate unit. It has been submitted that the two daughters of Kamta Singh, namely, Bimla Devi and Rita Devi, who also inherited upon death of Kamta Singh in the year 1972, are also entitled to their respective units. It is well settled that for reckoning the unit, relevant date is appointed date, that is, 9.9.1970. If Kamta Singh would have died before 9.9.1970 then different questions would have arisen. During the life time of Kamta Singh these two daughters had no interest in the property. Even according to the Petitioners' case, they inherited the property upon death of Kamta Singh in the year 1972. Since Kamta Singh was alive on 9.9.1970 and died in the year 1972, in my view, the daughters aforesaid, namely, Bimla Devi and Rita Devi, are not entitled to separate units. Therefore, I have no hesitation in rejecting this point.

9. Lastly, it has been submitted by learned Counsel appearing on behalf of the Petitioners that on 7.8.1962, 156.36 acres of lands were gifted by Kamta Singh, who was karta of the family under various registered deeds in favour of different members of the family enumerated hereunder:

Kesho Singh 28.05

Chandrawati Devi 29.98

Prem Jota Kuer 17.82

Girija Devi 21.70

Kamala Devi 30.02

Hira Singh 28.79

156.36 acres

It has been submitted that u/s 5(5) of the Act, as it originally stood, a land holder could have made a gift of any land, held by him as raiyat, to his son, daughter, any children of his son or daughter, or to such other person or persons who would have inherited such land or would have been entitled to a share therein had the land-holder died intestate, within a period of one year from the date of commencement of this Act in such a manner, so that the total area of land including the gifted one may not exceed the ceiling limit of the donee. The Original Act came into force on 19.4.1962. In the present case, the land holder had transferred the lands under various registered deeds, referred to above, executed by him on 7.8.1962, that is, within the grace period as permitted under law. It appears that by Bihar Act 1 of 1973 amendments were made and by virtue of provision of Section 4 of the Amending Act, Sub-section (5) of Section 5 of the Original Act, referred to above, was omitted and the Amending Act came into force on 9.9.1970. From these facts, it appears that prior to 9.9.1970 this provision was there and if any gift has been made within the grace period, the

same cannot be ignored. The authorities have ignored the gift holding that the gift never became effective. Undisputedly, all the deeds are registered and there is a clear recital therein that the respective donees came in possession of the lands donated to them. This shows that the transfer by gift is complete. If the State wanted to say that the gifts were inoperative and mere paper transaction, then it was for them to prove, but they have failed to produce any evidence in support of that. It is well settled that apparent state of affairs is real state of affairs and if a party asserts that deeds of gift were inoperative, it is for that party to prove the same. In the present case, it was incumbent upon the State to prove by leading cogent evidence, but no evidence, whatsoever, has been produced by the State to show that the deeds of gift were inoperative. In my view, the authorities acted upon a wrong premise as when transfer has been made by registered deeds and the donee came in possession of the gifted lands, the same can be avoided only if it is shown by way of cogent evidence that the gift remained inoperative. This being the position, the findings of the authorities that the aforesaid gift deeds remained inoperative is vitiated and cannot be allowed to stand.

10. Now question arises as to what would be the effect of transfer made in favour of different persons enumerated in Section 5(5) of the Original Act whether the entire lands have to be excluded from the ceiling proceeding or the same will be tagged with the land of the persons to whom different units have been granted. In the present case, one unit has been granted to Kashi Singh and some of the lands have been gifted in favour of his two widows, namely, Girija Devi and Kamala Devi. The lands gifted to these widows shall be included in the unit of Kashi Singh and if these lands or any part thereof are found in excess of lands to be retained by Kashi Singh, such excess land shall be declared surplus. Next land holder is Kamta Singh, who has been granted one unit and the donee is his widow Prem Jota Kuer. The land gifted to Prem Jota Kuer, who is spouse of Kamta Singh, will be tagged with the ceiling unit of Kamta Singh and if the lands or any part thereof are found in excess same shall be declared surplus. Likewise, Anr. donee is Chandrawati Devi, being spouse of Kesho Singh, to whom separate unit has been granted. The land gifted to this lady shall be tagged with the lands of Kesho Singh and if the land gifted to her or any part thereof is in excess of the ceiling area to be retained by Kesho Singh, such excess land shall be declared surplus. The last donee now is Hira Singh, who has been also granted separate unit. While calculating the lands to be retained by Hira Singh, the gifted lands shall be included and the excess land held by him shall be declared surplus.

For the foregoing reasons, I am of the view that it is necessary for the original authority to make calculation as directed above and for that limited purpose, the matter should be remanded.

11. Accordingly, this application is allowed in part, decisions of the authorities, contained in Annexures 1, 2 and 3 on the questions of classification, deeds of gift and granting additional land for mihors are hereby quashed and, the original

authority is directed to decide the matter in the manner indicated above. Fresh opportunity for exercising right of option will be given to all the persons.

It is stated that notification u/s 11 of the Act has been published but no gazette publication u/s 15 of the Act has been issued. In view of the aforesaid facts, I also quash the notification made u/s 11 of the Act. The original authority will now dispose of the matter in accordance with the aforesaid directions.

In the circumstances of the case, I direct that the parties shall bear their own costs.