

(1996) 08 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 4550 of 1992

Kumari Kiran Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 10(2), 11(1), 32B, 5(1)

Citation : (1997) 2 PLJR 12

Hon'ble Judges : D.R. Wadhwa, C.J.; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Kamal Kishore Mishra, for the Appellant; R. Ahsan in C.W.J.C. Nos. 4535 and 4550 of 1992 and B.P. Verma, M.M. Singh and V.B. Ambastha, in C.W.J.C. Nos. 4551, 4552 and 6786 of 1992, for the Respondent

Final Decision : Allowed

Judgement

D.R Wadhwa, C.J. and S.J. Mukhopadhaya, J.—As all the writ petitions arise out of common order passed in Ceiling Case No. 71P/73-74 and common points of law are involved, they have been heard together and are being disposed of by this common judgment.

2. Petitioners, namely, Kumari Kiran Choudhary, Kumari Kalpana Chaudhary, Kumari Kalyani Choudhary and Kumari Kumkum, who are Petitioners in first four writ petitions, they are married daughters of one late Maheshanand Thakur, whereas fifth writ petition (C.W.J.C. No. 6786/90) has been filed by widow Pramodeni Devi and two sons, namely, Binodanand Thakur and Chetanand Thakur of late Maheshanand Thakur.

3. A land ceiling proceeding was initiated against late Maheshanand Thakur, who filed objection after publication of draft statement u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short the "Act"). The total area of land was shown as 354.96 1/12 acres. Only 27.84 acres, equivalent to one unit was allowed to be retained by late

Maheshanand Thakur. Various objections were raised by late Maheshanand Thakur. He pointed out that 119.94 acres of lands were gifted to his daughters (the Petitioners of first four writ petitions). and 98.7 acres of lands to his two sons (Petitioners 2 and 3 of the 5th writ petition). Further, it was claimed that 10.14 acres of land was acquired for Kosi Project and 45.16 acres of land was in possession of Sikmidars. He further claimed that 11.50 acres of lands were in possession of one Pradhan Lal Mandal and Anr. Smt. Krishna Devi in pursuance of a decree passed by a Civil Court. He requested for deletion of such lands from the draft publication. Further, late Maheshanand Thakur raised objection relating to classification of lands, as shown in the draft publication.

The matter was fought by said late Maheshanand Thakur upto the revisional stage. In Revision Application Nos. 5/79 to 11/79 filed by said late Maheshanand Thakur, the then Additional Member, Board of Revenue, passed order on 31st May, 1979. So far as the lands, as claimed to have been gifted in favour of the four daughters (Petitioners of first four writ petitions) and the gifts which were made in favour of two sons (Petitioners 2 and 3 of 5th writ petition), made in April, 1963 through registered deed of gifts", were held to be in accordance with law, and was accepted. With respect to annulled transfer of 60.53 acres of lands, the matter was remanded for fresh enquiry u/s 5(1)(iii) of the Act, after giving opportunity of hearing to the concerned parties and for adducing evidences. Earlier orders passed by the Subdivisional Officer and Additional Collector were set aside.

4. It was in the year 1983, the original Land Ceiling Case No. 71P/83-74 was again taken up. In the meantime, the original landholder, late Maheshanand Thakur having died and the heirs were substituted. The Subdivisional officer, Araria by impugned order dated 16th May, 1983 decided the matter with regard to total area of land as was originally notified by draft publication. He allowed the gifts in favour of the daughters and sons, as was made by late Maheshanand Thakur, but did not accept the classification relating to which grievances were raised by the parties. According to the Petitioners, no separate draft statement u/s 10(2) of the Act was issued, but statements u/s 11(1) of the Act were separately issued in the name of individual Petitioners, copies of which have been enclosed in the writ petitions. It was in the aforesaid background, separate appeal petitions were preferred by all the Petitioners, bearing Ceiling Appeal Nos. 178/86-87, 181/86-87, 179/86-87, 180/86-87 and 177/86-87, all of which were rejected by similar order dated 21st March, 1988.

5. In the aforesaid circumstances, all the Petitioners moved before the revisional authorities by filing separate sets of revision applications bearing Ceiling Revision Case Nos. 116/88, 115/88, 113/88, 114/88 and 106/88, which have been rejected by Resolution all dated 19th July, 1990. The aforesaid orders passed in the year 1983 in Ceiling Case No. 71P/73-74, appellate orders and the revisional orders are under challenge in the present writ petitions.

6. According to the Petitioners, the proceedings which continued since 1983 and

decision which was given, they were so passed in contravention of Section 32B of the Act. It is submitted that no separate draft statement was issued u/s 10(2) of the Act, with respect to each and individual Petitioners and the matter was decided by the Sub-divisional officer, Araria. Further, according to the Petitioners, the classification of land, as was shown by the Respondent-Sub-divisional Officer, Araria was completely illegal. It is stated that the report which was submitted relating to classification of land by the officers of the Respondents, which were passed on spot enquiry and relevant data, such report was not acted upon by the Respondent-Sub-divisional officer, Araria, for the purpose of classification of land. According to the Petitioners, the classification as has been made by the Respondent-Sub-divisional officer, Araria is without basis, no discussion having been made with respect to nature of land, particularly, the irrigational facilities. Further, it is submitted that after the 1st revisional order was passed, in the case of late Maheshanand Thakur on 31st May, 1979 in Case Nos. 5/79 to 11/79, four Petitioners (daughters) and two other Petitioners of 5th writ petition (sons), with respect to them deed of gifts of having been held to be valid, by virtue of such deed of gifts, they become individual landholders with respect to their respective lands and no separate proceeding under the Act having been initiated against such individual land-holders-Petitioners, the Respondents had no jurisdiction to decide the matter relating to their lands, in the land ceiling proceeding which was initiated against late Maheshanand Thakur.

7. According to the counsel for the State, after the first revisional order passed on 31st May, 1979 in Case Nos. 5/79 to 11/79, the conciliation proceeding stood abated and subsequently in terms with Section 32B of the Act, the proceeding was taken up from the stage of Section 10 of the said Act. It is contended that in the aforesaid background, there was no need of holding any separate proceeding with respect to the Petitioners, who are daughters and sons of late Maheshanand Thakur. Further, it is contended that the Petitioners having been provided with units which they were entitled under the law, they cannot raise the matter relating to separate land ceiling proceeding against them, as these Petitioners are not entitled anything more than the units to which they are entitled.

8. The counsel for the Respondents further submitted that the matter relating to classification of lands having been dealt with by Sub-divisional Officer, Araria and thereafter by the appellate authority and revisional authority, this Court should not interfere in the matter relating to classification of lands under its writ jurisdiction.

9. From the pleadings made by the parties, it is evident that admittedly four Petitioners of the first four writ petitions, who are the daughters of late Maheshanand Thakur and the two Petitioners of the 5th writ petition, who are two sons of late Maheshanand Thakur, they are separate land-holders with respect to lands which were gifted in their favour by their father late Maheshanand Thakur. This fact has been admitted by the counsel for the Respondents, particularly, when the same has been accepted by the revisional

authority by its earlier order dated 31st May, 1979, and have been subsequently accepted by other authorities like Sub-divisional Officer, Araria, Collector, Purnia and Addl. Member, Board of Revenue.

10. Admittedly, the Land Ceiling proceeding bearing Case No. 71P/73-74 having been initiated against land-holder late Maheshanand Thakur, the Respondents are duty-bound to confine the said proceeding with respect to the lands which were in the name of late Maheshanand Thakur. According to this Court, the Respondents have no authority to decide the question of surplus lands with respect to other land-holders, like the daughters and sons of late Maheshanand Thakur in the land ceiling proceeding, which was initiated with respect to landholder late Maheshanand Thakur. This is enough ground to set aside the impugned orders, including the appellate orders and revisional orders, which are under challenge in these writ petitions.

11. Apart from the same, even it is presumed, as submitted by the counsel for the State, that in terms with Section 32B of the Act, the proceeding is to continue from the stage of Section 10 of the Act, in that case, "the Respondents should have again come out with draft publication in terms with Section 10(2) of the Act, only with respect to lands which belong to late Maheshanand Thakur, and not with respect to the other individual landholders like the daughters and sons, against whom no individual land ceiling proceedings were initiated.

12. It is admitted at the Bar that with respect to the daughters and sons, Petitioners herein, no local publication was made in terms with Section 6 to the Act. In such circumstances, this Court holds that no ceiling proceeding was initiated against the daughters and sons of late Maheshanand Thakur, who are Petitioners herein, so far as their respective lands are concerned.

13. So far as final order which has been passed with respect to the lands of Maheshanand Thakur, the subject matter of C.W.J.C. No. 7686/90 is concerned, such order also cannot be held to be valid, no reason having been shown with respect to classification of land by the order passed by the Sub-divisional officer, Araria, while not accepting the report relating to such classification.

14. For the reasons stated above, the impugned order dated 6th May, 1983 passed in Land Ceiling Case No. 71P/73-74 is set aside. The appellate orders and revisional orders, as challenged in the writ petitions, they are also set aside.

15. So far as Land Ceiling proceeding in Case No. 71P/73-74 is concerned, the same is remitted back to the Respondent-Sub-divisional Officer, Araria to decide the matter afresh after hearing the parties. He will confine the said case with respect to the lands which belong to late Maheshanand Thakur and not club such lands with the lands of individual landholders, i.e. the Petitioners herein, and Will decide the matter relating to classification of land, after taking into note the classification as shown in the report submitted by the other authorities.

16. It will also be open to the Respondents to initiate separate individual

proceeding in terms with the provisions of the Act, after local, publication u/s 6 of the Act, with respect to any one or other land-holders-Petitioners, like the daughters.

17. Accordingly, the writ petitions, namely, C.W.J.C. Nos. 4550/92, 4535/92, 4551/92 and 4552/92 are allowed. The writ petition i.e. C.W.J.C. No. 6786/90 is also allowed and is remitted with the aforementioned observations. In the facts and circumstances, there shall be no order, as to costs.