(2001) 09 PAT CK 0076

In the Patna High Court

Case No : C.W.J.C. No. 11725 of 2001

Mahanth Ram Das APPELLANT

Vs

The State of Bihar and Ors RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0076

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard learned Counsel for the petitioner, and JC to learned SC (Ceiling).

2. The petitioner claims to be a religious institution of public nature. It had filed an application on 5-12-1977 u/s 29(2)(a)(ii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act before the authorities under the Act, seeking exemption of lands to the extent of 15 acres from the operation of the Act. The matter remained pending with the Government and no decision was taken. The petitioner was compelled to move this Court in CWJC No. 19939 of 1996, which was dismissed. Aggrieved by the same, the petitioner moved this Court in LPA No. 1286 of 1996 Mohanth Ram Das v. State of Bihar, which was disposed of by a Division Bench on 30-9-1997 (Annexure-7), whereby the State Government was directed to dispose of the petitioner''s said application on merits after taking into account the two reports of the Collector of the district. The petitioner has now moved the present writ petition making a grievance that in spite of the said order of this Court in the Letters Patent Appeal, the State Government has not taken a final decision on the petitioner''s application in terms of Section 29(2)(a)(ii) of the Act.

3. Learned Standing Counsel (Ceiling) submits in opposition that the provision of Section 29(2)(a)(ii) has since been deleted by Bihar Act 8 of 1997. The quondam Section 29(2)(a)(ii) of the Act is set out hereinbelow for the facility of quick reference:

29. (2)(a) The State Government may, by notification in the Official Gazette, exempt from the operation of Section 5.

(1)....

(ii) so much land not exceeding fifteen acres of Class I land or equivalent area of other classes owned and held under personal cultivation by any religious institution of a public nature on the date of the commencement of this Act, as may be determined by the Collector of the district in the prescribed manner to be necessary for the purposes of performing religious rites and maintenance of the religious institutions.

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1995 (Bihar Act 8 of 1997) had received the assent of the President of India on 12-3-1997, and was published in the Bihar Gazette (Extra-ordinary) dated 27-3-1997, whereby the said Section 29(2)(a)(ii) has been deleted. Section 2 of the Amending Act is set out hereinbelow for the facility of quick reference:

2. Amendment of Section 29 of the Bihar Act 12,1962.--In the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12,1962) (hereinafter referred to as the said Act) Sub-section (ii) of Clause (a) of Sub-section (2) of Section 29 shall be deleted and shall always be deemed to have been deleted.

(Emphasis mine)

It is manifest from a plain reading of Section 2 of the Amending Act that Section 29(2)(a)(ii) shall be deleted and shall always be deemed to have been deleted, meaning thereby that this provision is retrospectively deleted. In that view of the matter, it would be a futile direction by this Court if the respondents are directed to carry out the said order dated 30-9-1997 (Annexure-7), and dispose of the petitioner''s application u/s 29(2)(a)(ii) of the Act because the State Government has now no option but to reject the application in view of the changed legal position. The judgment of the Supreme Court reported in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, which dealt with a comparable amendment introduced by Act 40 of 91,, to the Central Excises and Salt Act 1944, fully applies to the present case. I had the occasion to follow the same in my judgment reported in (2000) 1 BLJR 444 (Tata Iron and Steel Co. Ltd. v. Union of India).

4. In the result, this writ petition is dismissed.

