

(2011) 03 PAT CK 0109
In the Patna High Court
Case No : LPA No. 502 of 2011

Mahendra Nath Chaudhuri and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Citation : (2013) 3 PLJR 361

Hon'ble Judges : T. Meena Kumari, J;Akhilesh Chandra, J

Bench : Division Bench

Advocate : Rajendra Narayan and Dr. Mayanand Jha, for the Appellant; Hareram Singh for the State and Mr. Tuhin Shanker for the Respondents No. 5 and 6, for the Respondent

Judgement

1. When the matter has come up for admission the official respondents are represented by A.C. to GP-22 and the private respondents No. 5 and 6 are represented by Mr. Tuhin Shanker. All the counsel agreed that the matter can be disposed of at the time of admission itself. The petitioners have filed the writ petition. The parties in array in the CWJC No. 12680 of 2004 Reported in Mahendra Nath Chaudhuri and Another Vs. The State of Bihar and Others, are aggrieved by the inclusion of their lands, as contained in Annexures-A and B to the Supplementary Counter Affidavit of the Memo of Appeal by the Notification dated 31st August, 2004, issued u/s 15(1) of the Land Ceiling Act, arises out of Land Calling Case No. 2/84-85 showing the name of one Prem Kishori Devi as the landholder on the ground that they are the holders of the land acquired by way of partition and that the lands are ancestral in nature and they could acquire the title by way of partition effected long back. But, however, the learned single Judge has chosen to remand the matter back to the Authorities and disposed of the writ petition granting liberty to the petitioners to approach the competent authority and for re-opening of the proceeding within five weeks from the date of order and also further held that if any application is filed within the above period the same shall be considered and disposed of in accordance with law.

2. It has also been held by the learned single Judge, after hearing all the parties, that the order sheet of Land Ceiling Case No. 2/84-85 was not enclosed by the writ petitioners in order to show that such issue was raised earlier in the said proceeding wherein entire land belonging to the family of landholder was made subject matter of the adjudication at any point of time. On that ground the relief has been refused further directing the petitioner to re-open the case of the Land Ceiling proceeding in terms of Section 45B of the Act.

3. Learned counsel for the appellants has contended and brought to the notice of this Court the Gazette Notification (Annexure-2) and also copy of the mutation proceeding (Annexures-5 & 6) showing the name of the petitioner's father in mutation proceeding but, however, the same has not been taken into consideration by the learned single Judge. The learned counsel also further argued that in absence of any material document available to show that the lands belongs to respondents No. 5 and 6 the Authorities have committed an error of record in coming to the conclusion by showing the name of respondent Prem Kishori Devi, who is no more and already dead. The respondents No. 5 and 6, being the legal heirs of said Prem Kishori Devi, have been made party. It is also contended that the Authorities have committed an error in coming to the conclusion of his own that the land belonged to said Prem Kishori Devi by issuing Notification dated 31st August, 2004 even without noticing the present petitioners.

4. Alongwith the writ petition the fact remains that in the Memo of Appeal the name of father of the petitioner has been shown as the landholder of the lands, as contained in Annexures-A and B and B/1 of the supplementary affidavit. We have also to observe that in absence of any material document available whether the disputed land belongs to the said Prem Kishori Devi, there cannot be any basis for the official respondents to come to the conclusion that the land belonged to the said Prem Kishori Devi. Even in the appeal there was no material placed before this Court by the official respondents that the land belonged to Prem Kishori Devi. Moreso, notice was issued but in view of absence of such material available before this Court, we are of the opinion that the official respondents have committed an error in coming to the conclusion that the lands in dispute, as contained in Annexures-A and B and B/1 of the supplementary counter affidavit (sic). Under the above circumstances, there is no material placed before this Court by the official respondents that the notice, as required under the Land Ceiling Act, has been Issued to the appellants herein.

5. Under the above circumstances, we are of the opinion that the order of the learned single Judge has to be set aside and, accordingly, it has been set aside and the matter is remanded back to the Authorities to reconsider the matter afresh that the land belonged to said Prem Kishori Devi. We are of the opinion that the official respondents have committed an error in coming to the conclusion that the lands belonged to Prem Kishori Devi. Accordingly, the Gazette Notification dated 31st August, 2004, to the extent that the lands showing as the

lands belonging to the appellants in Ceiling Case No. 2/84-85 is quashed and the matter is remanded back to respondent No. 4 to issue fresh notice, if he so desires, to the appellants as well as to the respondents to put forth their cases. With the above observations, the order of the learned single Judge, dated 14th February, 2011, is set aside and the Letters Patent Appeal is allowed to the above extent.