
(1977) 12 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 71 of 1977

Mayabati Devi and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 15-12-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Hindu Succession Act, 1956 — Section 14

Citation : (1977) 25 BLJR 290

Hon'ble Judges : S.K. Choudhuri, J; Hari Lal Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an application under Articles 226 and 227 of the Constitution of India. There are two petitioners in this case. Beradar Choudhary, petitioner No. 2 is the son of Lakshmi Choudhary against whom a proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") was started by the Collector, Begusarai, respondent No. 2 giving rise to Ceiling case No. 3/6 of 1974-75 and subsequently it was transferred to the Additional Collector, Begusarai, respondent No. 3. Petitioner No. 1 Mayabati Devi claims to be the widow of Lakshmi Choudhary, in other words the mother of petitioner No. 2.

2. The proceeding in question was started against petitioner No. 2 only who filed a return on 7.8.1975 in pursuance to a notice u/s 8(1) of the Act issued to him. In the said return, a copy of which has been filed as Annexure-1 to this writ application, he has also appended a genealogical table as schedule "Gha" showing petitioner No. 1 as his mother and still alive. The petitioners have stated that in spite of that fact being brought to the notice of respondent No. 3, the Additional Collector, although an order was passed on 7.8.1975 for making a verification by the Anchal Adhikari, Motihari (respondent No. 4) no verification was made by respondent No. 4 in presence of the petitioners nor did they receive

any notice of any verification. It is apparent from the records and the order sheet of the case that before the verification report, if any, was received in pursuance of the order dated 7.8.1975, a draft statement u/s 10 of the Act was signed by respondent No. 3 and ordered to be served upon petitioner No. 2 but it was actually never served upon him. No objection having been filed u/s 10(3) of the Act, the final publication of the draft statement was made by respondent No. 3 and ultimately Gazette notification was published u/s 15 of the Act on 1.6.1976 declaring 22 acres 861/2 decimals of land as surplus. Then petitioner No. 2 was served with a copy of the final statement aforesaid, filed a petition before respondent No. 3 on 21.6.1976 (Annexure-5) raising various objections and claiming a review of his case. We are not concerned with the details of these objections. As the Act does not contemplate a provision for review by his order dated 29.6.1976 respondent No. 3 rejected the application aforesaid. Thereafter the petitioners filed another application (Annexure-7) on 28.7.1976 before him regarding the case of petitioner No. 1, who was also physically produced before him for his verification along with certain documents such as Gram Panchayat register, copies of voters' list etc. This petition was also rejected by order dated 22.11.1976 (Annexure-8) by respondent No. 3. The petitioners, therefore, have come to this Court.

3. It may be mentioned that earlier sub-Section (3) of Section 15 of the Act contained a provision for filing objection by any person claiming interest in the land specified in the notification of the final publication. But this provision has been deleted by Bihar Ordinance No. 219 of 1976 on 2.11.1976. Petitioner No. 1, therefore, had no statutory right to put forward her claim before any of the revenue authority and, therefore, we considered the contentions raised on her behalf by the learned Counsel in great detail.

4. Mr. Kailash Roy appearing for the petitioners contended that petitioner No. 1 was also a "land-holder" within the meaning of Clause (g) of Section 2 of the Act and, therefore, being a separate "family" within the meaning of Clause (ee) of Section 2, was entitled to a separate unit in her own right, besides her son petitioner No. 2. This question led us to the consideration of a larger question as to whether petitioner No. 1 could be said to be a "land-holder". According to the own case of the petitioners, Lakshmi Chaudhary the father of petitioner No. 2 died in the year 1940. Long arguments were advanced by learned Counsel on behalf of both the parties--the controversy being the nature of the right this petitioner had on the "appointed day".

A question was raised on behalf of the respondents that petitioner No. 1 having only a limited interest in the estate of her husband and there being no partition by metes and bounds in the family, whether she could be entitled to the benefit of Section 14 of the Hindu Succession Act? It was, however, conceded that once Section 14 of the Hindu Succession Act could be applied to her, the limited interest held by her would become absolute and then she must be held to be a "family" within the meaning of Section 2(ee) of the Act and entitled to a separate

unit.

5. The question although a vexed one is not res integra and has fallen for decision before this and several other High Courts as well as the Supreme Court in a large number of cases. Without, however, citing those authorities we may simply say that the bulk of the judicial opinion on this question is that a widow does not by operation of the 1956 Act become a coparcener of her husband's family although her position in the joint family may in many respects be analogous to that of a male undivided coparcener in the interest that she derived u/s 3 of the Hindu Women's Right to Property Act (No. XVIII of 1937). Her interest before the Hindu Succession Act came into force was although limited but it would not be correct to describe that interest as inchoate or imperfect till a partition was claimed or affected. She becomes entitled to the undivided interest of her deceased husband and took the same interest as her husband. She may or may not choose to demand partition and, therefore, even where she does not enforce a partition and the joint family continues as before, without any severance of the joint status, incidents of the coparcenery continue to apply to all the members including the widow with this reservation that her existence suspends the rule of survivorship.

6. The Supreme Court in the case of Dindayal and Another Vs. Rajaram, has observed that possession of a widow u/s 14(1)(b) of the Act may either be actual or constructive. We, therefore, find no force in the contention of Sri Khaleel, learned Counsel appearing for the respondents that unless there had been an actual partition in the family of the petitioners and petitioner No. 1 was allotted an exclusive share over which she was in possession on the date of coming into force the Hindu Succession Act, she could not derive any benefit of the provisions of Act.

7. We may refer to yet another decision of the Supreme Court in the case of Seth Badri Prasad Vs. Srimati Kanso Devi, . It was again observed in this case that the words "possessed and acquired" in sub-Section (1) of Section 14 were used in their widest connotation and the possession may be either actual or constructive or in any form recognised by law. It was said there that,-

Where at the commencement of the Act, namely, "the Hindu Succession Act, a female Hindu has a share in the joint family which are later on partitioned by metes and bounds and she gets possession of the property allotted to her, there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement

On reference to these authorities we do not have any manner of doubt that the interest of petitioner No. 1 became absolute u/s 14 of the 1956 Act. If she is ultimately found to be the mother of petitioner No. 2, then she would be a "land-holder" within the meaning of Clause (g) of Section 2 of the Act and that she will be also a "family" within the meaning of Clause (ee) of Section 2 of the Act and

will be entitled to a separate unit. Her case has not been investigated by respondent No. 3 and the matter required reconsideration. We would, accordingly, hold that it is ultimately found in an enquiry, which we are directing, that she is the widow of Lakshmi Chaudhary, father of petitioner No. 2, she will be entitled to a separate unit.

8. In the counter-affidavit that has been filed on behalf of respondents 1 to 5 the identity of petitioner No. 1 as wife of Lakshmi Chaudhary has been challenged and it has been stated that she is not the mother of petitioner No. 2. In support of this statement reference to some verification reports has also been made. Although the denial has been made in a very vague manner, non-the-less as Lakshmi Chaudhary is said to have died long back in the year 1940 we would direct respondent No. 3 to hold enquiry in this matter as to whether petitioner No. 1 is his widow. It will be open to the petitioners as well as the respondents concerned to produce fresh evidence oral or documentary in support of their respective cases. In order to avoid any further delay in this matter we would fix 16th January, 1978 as the date for appearance of the parties before the Additional Collector, Begusarai (respondent No. 3) who will fix a firm date of hearing of the case.

9. We may also mention that in view of the final publication of the draft statement on 1st of June, 1976, as it appears from the order, dated 21st of November, 1976 (Annexure-8) and that the surplus land as declared under the said notification has already been distributed to various persons, it will be open to respondent No. 3 to issue notice to the allottees in the matter of hearing of the above question, if possession has already been delivered to them. Otherwise no notice need be issued to them.

10. The result of the above discussion is that this application succeeds and the matter is sent back to respondent No. 3 for a fresh hearing and determination of the matter in terms of our observations and directions. Let an appropriate writ issue accordingly. In the circumstances, however, we shall make no order as to costs.