

(1994) 03 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3188 of 1993

Narbdeshwar Mahadev Mandir

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 11, 15

Citation : (1994) 1 PLJR 832

Hon'ble Judges : B.N. Singh "Neelam", J; B.N. Agrawal, J

Bench : Division Bench

Advocate : Bashishtha Narayan Mishra, for the Appellant; Jamilur Rahman, for the Respondent

Final Decision : Allowed

Judgement

B.N. Agrawal and B.N. Singh "Neelam", JJ.—This writ application has been filed for quashing order dated 4.5.1989, contained in annexure "1", whereby a direction has been given for making final publication of the draft statement prepared u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the "Act"), final publication made u/s 11 of the Act, Gazette Notification published u/s 15 of the Act, contained in Annexure "3" order dated 14.9.1992, contained in Annexure "2" and resolution dated 20.3.93 contained in Annexure "5", confirming the aforesaid order contained in Annexure "1".

2. It appears that a proceeding was started for acquisition of surplus land against the Petitioner, which is a temple and it was found that the total land held by the temple is 51.82 acres, out of which land of 43.12 acres was class I land and land of 8.70 acres was of class IV land. From the order contained in annexure "1", it appears that out of 51.82 acres of land, land of 1.41 acres was exempted and land of 50.41 acres was declared surplus Against the said order, when an appeal was taken the District Collector upheld the same Thereafter a revision application

was preferred by the Petitioner and the revisional authority by its order, contained in annexure "5", has confirmed the aforesaid order and dismissed the revision application. Hence this application.

3. Learned Counsel appearing on behalf of the Petitioner contended that by patta executed on 22.7.1948 the aforesaid land was settled with the deity in question and since that day the deity being a juristic person coming in possession of the same. Therefore one unit ought to have been granted in four of the deity, but the authorities were not justified in not granting even one unit to the deity. Learned Counsel appearing on behalf of the State, on the other hand, stated that in view of the aforesaid statement that the patta was executed in favour of the deity, he was not in a position to dispute the point raised on behalf of the Petitioner. Therefore, we are of the view that the authorities were not justified in not granting even one unit to the deity.

4. Learned Counsel appearing on behalf of the State, however, contended that in view of the aforesaid decision, the deity is entitled to one unit as such, the order granting exemption to the extent of 1.41 acres of land to the deity become unwarranted. Since the deity is being granted one unit question of granting any further land for maintenance does not arise.

5. Learned Counsel appearing on behalf of the Petitioner submitted that his client is not challenging the classification of the aforesaid lands as the same have been rightly classified by the authority, therefore, it is not necessary to go into the question of classification.

6. In the result this application is allowed, orders contained in annexures "1", "2" and "5" and the final publication made u/s 11 of the Act and Gazette Notification made u/s 15 of the Act are hereby quashed and the matter is remanded to the additional Collector. After remand, the Additional Collector shall grant one unit to the deity and then after giving opportunity to the Petitioner to exercise right of option he shall declare the other lands to be surplus for which fresh publication u/s 11 of the Act and fresh Notification u/s 15 of the Act shall be made with regard to the land declared surplus.

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