

(1993) 03 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12206 of 1992

Nunu Devi alias Nunu Dai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Citation : (1993) 03 PAT CK 0022

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against the order dated 20-12-1991 passed by Additional Member, Board of Revenue (Annexure-4) order dated 22-7-1983 passed by the respondent No. 7 and as contained in Annexure-2 to the writ application and the notification dated 20th August, 1990 published in Purnia District Gazette Extraordinary Issue No. 21 dated 22nd August, 1990 as contained in Annexure-5 to the writ application.

2. One Mohan Lal Yadav was the owner of the land. The land-holder did not submit any return. However, according to information, collected u/s 7 of the said Act the aforementioned Mohan Lal Yadav was allegedly holding lands in excess of the ceiling area.

3. According to the petitioner the said informations were not verified in accordance with law and a draft statement was prepared on 24-9-1976.

4. Mohan Lal Yadav allegedly died leaving behind the following heirs :--

"Widow ? Nunu Devi alias Nunu Dai (Petitioner No. 1)

Sons : ? Bhubneshwar Yadav,

Surendra Narain Yadav,

Hari Narain Yadav,

Sri Narain Yadav.

Daughter ? Nirmala Devi : ?

Geeta Devi,

Savita Devi ... Petitioner No. 3.

Daughters of the Predeceased daughter named Lalita Devi.

Meera Devi - Petitioner No. (4)

Renu Devi. Petitioner No. (5)

Petitioner No. 2 is the son of Bhubneshwar Yadav."

5. However, after the death of the aforementioned land-holder only the petitioner No. I was substituted. By reason of an order dated 18-2-1977 the lands were classified as Class IV lands.

6. After the coming into force of the Act No. 55 of 1982 the said proceedings abated and upon revival thereof from the stage of Section 10, by an order dated 22-7-1983 although no fresh verification was made, the lands were held to be Class I and Class III lands.

7. By reason of the said order, the Shares of only two daughters namely Nirmala Devi and Geeta had been allowed.

8. It has further been contended that in support of majority of the petitioner No. 2 a medical certificate was produced but the same has also not been considered.

As noticed hereinbefore, the appeal and revision preferred by the petitioners, against the aforementioned order have been dismissed.

9. A notification u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Land) Act, 1961 (hereinafter referred to as the said Act) has also been issued, without waiting for the period of filing a revision application in hot haste.

10. It is not in dispute that the Ceiling Area at the hands of a family in terms of Section 5 of the said Act has to be determined on the basis of the State of affairs existing on the appointed day i.e. 9-9-1970. The ceiling area has also to be determined keeping in view that the land holder is a "family" which means husband, wife and their minor children.

11. Thus only the major children of the aforementioned Mohan Lal Yadav were entitled to separate units.

12. So far as the petitioner No. 2 is concerned, the question as to whether he was major or minor as on 9-9-1970 has been determined by the Collector although no verification therefor was made. The petitioner No. 1 had sworn an affidavit in the year 1976. The said affidavit however was not admissible in evidence on the procedure laid down under Order 19 of the CPC had not been followed. No evidence, however, has been adduced on behalf of the State.

13. Further, it appears that a mistake has also been committed with regard to the classification of the land. In Annexure-1 to the writ application, it has been held that the lands in question do not have any irrigational facilities and the canal is situated about 1 kilometer west from the village of the land-holder.

In that situation, it was held that the lands must be classified as Class IV lands. Although no further verification had been made, the lands in question have been treated to be a class III lands by the aforementioned order dated 22-7-1983.

14. Section 4(c) of the Act defines Class III lands as those lands which are irrigated or capable of being irrigated by works which provide or are capable of providing water for only one season.

15. Thus existence of irrigational facilities by works is sine qua non for bringing the lands within the purview of Class III lands, as otherwise the lands would come within the purview of Class IV.

16. This aspect of the matter has been considered in *Gorelal Singh Vs. The State of Bihar and Others*, .

17. It has further to be borne in mind that the relevant date for the purpose of determining the availability of the irrigational facilities is on 9-9-1970 and the classification has also to be made on the basis of existence of the source of irrigation as on that date.

18. For the reasons aforementioned, this writ application has to be allowed and the impugned order and the notifications have to be set aside and the matter should be remitted to the Collector under the Act for a fresh decision in accordance with law.

19. However, in the facts and circumstances of the case, there will be no order as to costs.

R.M. PRASAD, J.

20. I agree. Application allowed.