**(1998) 07 PAT CK 0035**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 6405 of 1989

Pramod Prasad Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 01-07-1998

**Acts Referred:**
Hindu Succession Act, 1956 — Section 6, 8

**Citation :** (1998) 3 BLJR 1646 : (1998) 2 PLJR 689

**Hon'ble Judges :** D.S. Dhaliwal, J;Aftab Alam, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

1. This writ petition arises from a land ceiling proceeding under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ''the Act''). The proceeding was initiated against the petitioner and a draft statement was prepared on 4.11.1977 showing him in possession of 110.5 acres of Class V lands.

2. According to the petitioner, his father, Anirudh Prasad Singh died in 1976, before the commencement of the proceeding, leaving behind his widow Smt. Yavendra Priya Devi, two sons Kedar Prasad Singh and the present petitioner Pramod Prasad Singh and five daughters, all of whom had attained majority long before the appointed date 9.9.1970. In this case, we are not concerned with Kedar Prasad Singh, the other brother of the petitioner, who according to the petitioner''s case was living separately from the life time of their father and against whom a separate land ceiling proceeding was initiated. In the proceeding initiated against the petitioner, the Additional Collector after considering the petitioner''s objections u/s 10(iii) of the Act allowed him 2 units-one for himself and the other for his widowed mother, and directed for preparation of the final statement showing 88 acres of Class IV land and declaring 28 acres as surplus. At the appellate stage, the question of units for the five sisters of the petitioner was also agitated and the Collector by his order, dated 29.1.80 remanded the

 

matter to the Additional Collector with direction to consider, inter alia, the question of giving shares to the five daughters of the late Anirudh Prasad Singh.

3. At that stage the proceeding got abated in terms of Section 32-A and a fresh proceeding was initiated u/s 32-B of the Act. It may be noted here that in the freshly initiated proceeding a verification report dated 12.3.1983 was received, which supported the case of the petitioner that his father Anirudh Prasad Singh on his death had left behind five daughters who were all major on 9.9.1970. The Additional Collector, however by his order, dated 15.12.1984 (Annexure-1) once again allowed only two units to the petitioner. One for himself and the other for his widowed mother.

4. The petitioner filed an appeal against this order, which was dismissed by the Collector by order, dated 6.3.1986 (Annexure-9). The Collector disallowed any units to the petitioner''s five sisters on the ground that in the earliest return filed on 19.2.77 there was no mention of the five daughters left behind by the petitioner''s father.

5. The petitioner then came in revision before the Member, Board of Revenue. The revisional Court by order, dated 3.3.1989 (Annexure-11) dismissed the revision and affirmed the orders passed by the Additional Collector and the Collector. The Additional Member. Board of Revenue disallowed any units to the petitioner''s five sisters on the plea that on the death of Anirudh Prasad Singh the entire lands held by him devolved upon his widowed wife and not upon his sons and daughters, and the daughters therefore might claim any share in the land left behind by the father only in a partition suit and not otherwise. The relevant passage in the order passed by the Additional Member, Board of Revenue is contained in paragraph 6 which is as follows:

6. Now the main contention of the petitioner is that he should be allowed shares for five daughters. Since the daughters'' names were not mentioned in the return dated 19.2.77 of Anirudh Prasad Singh and there were no documents to support their existence. The learned Collector disallowed this contention. The learned A.G.P Shri Jageshwar Prasad Sinha in his notes of arguments has ably and intelligently rebutted the contention of the petitioner and pointed out the correct position of law His arguments are that the unit of Anirudh Prasad Singh has already, on his death, passed to Yavendra Priya Devi, the widow. It can devolve on sons and daughters only after the death of the widow mother, If the daughters are so willing, they can get their share after partitioning the mother''s share in a competent civil Court. Therefore, the main contention of the petitioner about giving the shares to the daughters does not hold good. The unit has already devolved on the widow and the petitioner simply wants to have the cake as well as eat it. The learned A.G.P. Shri Sinha has taken the winds out of the sails of the petitioner. Therefore, I agreed with the findings of the learned Collector who rejected this contention of the petitioner. In this connection, it is important also that none of the daughters have themselves cared to appear before this Court and claimed their share.

6. It appears to us that the learned Additional Member. Board of Revenue has thoroughly misdirected himself and has adopted a course, which is contrary to law. It is well established that in view of the provisions of the Hindu Succession Act, on the death of Anirudh Prasad Singh his interest in the land would also devolve on his five daughters in accordance with the provisions of Section 6 read with Section 8 of the Hindu Succession Act. The five daughters along with the two sons and the widow would be Class I heir and have their lawful shares in the lands left behind by their deceased father. A direct decision on this point may be seen in Dwarika Singh v. The State o1 Bihar Ors. 1977 BBCJ 696, where in paragraph-3 a Bench of this Court held as follows:

The first contention that has been raised on behalf of the petitioner is that the three sisters of the petitioner had also interest as land holders in the family property and that their interest should have been excluded from consideration in the present proceeding. The view taken by the Additional Member, Board of Revenue, is that since Deokinandan Singh died subsequent to 9.9.70 there is no question of his three daughters having interest of the landed property of their father on 9.9.70. To this extent the learned Additional Member, Board of Revenue, is right but we have clarified the legal position in Smt. Savitri Devi Drolia v. State of Bihar, that the ceiling area has to be determined with reference to a land held by a living person and not in respect of the dead person. It cannot be disputed, in view of the provisions of the Hindu Succession Act, that on the death of Deokinandan Singh his interest in the property would also devolve on his three daughters in accordance with the provisions of Section 6 read with Section 8 of the Hindu Succession Act. Thus 1/4th interest in the coparcenary property of which Deokinandan Singh and Dwarka Singh were members devolved on the three daughters. It is, therefore, only in respect of the remaining 3/4th interest that the authorities have jurisdication to consider whether the same is in excess of the ceiling area prescribed by law. Of course, whatever interest devolves on the three daughters would be clubbed together with that of their respective husbands for determining whether their family is in excess of the ceiling area.

7. It is, thus, evident to us that the decision of the Additional Member, Board of Revenue is founded on an erroneous premise and is, therefore, unsustainable in law. We, accordingly, set aside the impugned orders passed by the authorities under the Ceiling Act and remit the matter to the Collector, Patna to pass afresh order in accordance with law. It will be open to the Collector to satisfy himself that following the death of Anirudh Prasad Singh, the devolution took place in the natural course and not on the basis of any will, etc, The Collector may also satisfy himself that the five sisters of the petitioner had attained majority on 9.9.70. In case the Collector desired to hold any inquiry on these questions, he would give due notice to the petitioner-landholder and his five sisters who would be entitled to lead such evidence as they may wish to rely upon.

8. In the result, this application is allowed with the observation and directions

 

made above.

 