

(1976) 01 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 345 of 1975

Radha Krishna Thakur Ji and Others

APPELLANT

Vs

Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 19-01-1976

Acts Referred:

Citation : AIR 1976 Patna 342

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

Bench : Division Bench

Advocate : Kameshwari Nandan Singh and Pashupati Nath Jha, S.B. Sanyal, N.C. Ganguli, Chowdhary and S.N. Mishra, for the Appellant;

Final Decision : Allowed

Judgement

1. By this writ application the seven petitioners are challenging the order of seizure made in the month of October, 1974, which is made Annexure "3" to this writ application, by a Magistrate under the provisions of Clause 6 of the Bihar Foodgrains (Declaration of Stock by Cultivators and Requirement to Sell) Order, 1974 (hereinafter referred to as the "Order") and the subsequent order dated 2-11-1974 passed by the Sub-divisional Officer, Sadar, Monghyr (Annexure "4") and of the Collector dated the 20th January, 1975 (Annexure "6").

2. The relevant facts are these : It is an undisputed fact that petitioner No. 2, Shiva Shankar Prasad Jaiswal, is a recorded "cultivator", within the meaning of the Order and so is petitioner No. 1 who is the deity of his family. The deity also has been recorded as a cultivator in the revenue records. The third petitioner, Janardan Prasad Jaiswal is the son, whereas two petitioners Nos. 4 and 5, namely, Smt. Chandrakala Jaiswal and Smt. Mira Rani Jaiswal are the two married daughters of petitioner No. 2. The sixth petitioner, Bina Rani Jaiswal is an unmarried daughter and the last petitioner, Smt. Chandra Mukhi Devi happens to be the wife of the second petitioner, each one of whom is also a land holder separately mutated as a raiyat in the revenue records of the State of Bihar.

In support of this fact, which is although not controverted, rent receipts issued by the revenue authorities have been filed and annexed to this application as Annexure "1" series. On 12th October, 1974, a raid was made by a raiding party headed by a Magistrate on the house of the petitioners who live in one and the same house and a large quantity of foodgrains were seized in that operation. The total quantities of different kinds of foodgrains found at that time by the authorities were as follows:--

Gram ... 76 quintals
Phonki gram ... 18 quintals
Maize ... 23.90 quintals
Wheat ... 119 quintals
Rice ... 1 quintal

Besides, the above there were found also some other foodgrains which were not the scheduled commodities under the Order. Out of the above, the following foodgrains were seized:--

Gram ... 52 quintals
Phonki gram ... 18 quintals
Maize ... 18.90 quintals
Wheat ... 84 quintals

The foodgrains were seized by the raiding party under an impression that it belonged to only one "cultivator", namely, the petitioner Shiva Shankar Prasad Jaiswal.

3. The petitioners then filed separate representations before the Sub-divisional Officer, as provided under Clause 5 (1) of the Order. It provides that any cultivator required under Clause 4 to sell his stock of wheat and/or paddy, rice, gram, maize or any part thereof may, within seven days from the date of such order, make a representation to the concerned Sub-divisional Officer giving details of his bona fide requirements, and the like, who after giving him an opportunity of being heard may either allow the same wholly or in part; or reject the same. It may be further stated that under Clause 4 every cultivator, holding in stock foodgrains in quantity exceeding his reasonable requirements when required to do so by an order in writing served on him by the Sub-divisional Officer, is to sell to the State Government or to an Officer or agent of the State Government such quantity of foodgrains as may be determined by the Sub-divisional Officer, to be in excess of his reasonable requirements and in such circumstances as may be specified in the order passed by him for which a form has been prescribed in the Order itself. Earlier to that, Clause 3 (1) provides that every cultivator who holds in stock any one foodgrains exceeding twenty quintals or all foodgrains taken together exceeding fifty quintals in quantity shall forthwith make a true declaration of the foodgrains held in stock by him in the prescribed form.

4. The Sub-divisional Officer, however, rejected the representations by his order dated 2-11-1974, already referred to earlier, and thereupon the petitioners preferred an appeal before the Collector which also met the same fate and was dismissed on 20th January, 1975, mainly on the ground that

"there was no reason to believe that all of them were keeping their foodgrains in

the house of Shiva Shankar Prasad Jaiswal. Either their claim for separate identities is bogus and meant to circumvent the law or their claim to have stored all their foodgrains in one place is wrong."

It is against this order that the petitioners are challenging the correctness of these orders by the present writ application.

5. In the counter-affidavit that has been filed on behalf of respondents, their stand is as follows:--

"..... all the petitioners are the

members of the joint family headed by petitioner No. 2. Relation to each other has clearly been admitted in this paragraph..... no other members of the family except petitioner No. 2 appeared before the raiding party..... keeping the grain at one place and only appearance of petitioner No. 2 before the raiding party prove that the mutation in different name was only to defeat the Government policy when in reality they are joint in every meaning headed by the petitioner No. 2."

6. The question arises as to whether the seven petitioners being individually mutated over separate holdings in their exclusive names, the respondents were justified in law in seizing the food-grains in question treating them as members of the same family or in other words, treating petitioner No. 2 as the Exclusive "cultivator" forming a single unit for the purpose of this Order and as to whether on account of the fact that all the food-grains of the different petitioners were found stored at one place and they were found living together, would make any difference in the eye of law.

7. In order to appreciate the question a few further provisions of the Order have to be examined. The term "cultivafor" has been specifically defined in Clause 2 (d). The term in relation to any holding means the raiyat of the holding, recorded as such in the revenue records and includes a person who actually pays rent for the holding. Obligation has been cast under Clause 3 by such a recorded raiyat (cultivator) to make a declaration with respect to the quantity of foodgrains held by him in excess of the limit prescribed thereunder as already stated earlier. Clause 4 empowers the Sub-divisional Officer to make an order in writing requiring to sell to the State Government or to any Officer or agent on such a cultivator holding in stock foodgrains in quantity exceeding his reasonable requirements. But in order to make such an order upon a cultivator, some pre-requisite conditions must be satisfied which are (i) the person required to do so must be a cultivator in relation to any holding, (ii) he must be holding in his stock any one foodgrains exceeding twenty quintals or all foodgrains taken together exceeding fifty quintals and (iii) there must be a determination by the Sub-divisional Officer, having regard to the various elements as laid down in Clause 4, that the requisitioned stock ordered to be sold by him was in excess of the reasonable requirement of the cultivator. Any order passed in violation of these conditions would be ultra vires the Order. It is apparent that only this

excess stock can be ordered to be sold by the Sub-divisional Officer to the State" Government or any other competent person. We are not prepared to accept the stand of the respondents as taken in the impugned orders (Annexures "4" and "5") as also in their counter-affidavit that the respondents have manipulated the mutation in different names of their family members "only to defeat the Government policy, when in reality they are joint in every meaning". The law entitles a citizen to arrange his affairs in such a way to secure the maximum benefit under any law. The action, therefore, was apparently lawful and its validity was not a question germane to the taking of any action by the authorities. Under Sub-clause (d) of Clause 2 of the Order, it is specifically prescribed that a raiyat in relation to any holding means the recorded holder of the same and such a raiyat is treated as a cultivator for the purpose of the Order in question. Once this position is clearly understood, it cannot be disputed that the entire action in the present case by the respondents was misdirected. It was open to the petitioners as members of an erstwhile joint Hindu family to live in the same house as well as to store their harvest at one place. A unit for the purpose of the application of the provisions of the Order, has been very clearly indicated under Clause 2 (d) to mean the recorded owner of a holding in the revenue records. Each one of the recorded owner of a holding is one "cultivator" who has to discharge obligation such as making of a declaration under Clause 3 if he is hit by its mischief as already indicated earlier. It is, therefore, abundantly clear that if once different persons have been recorded separately for their respective holdings, they cannot be joined together by the authorities for applying the provisions of this Order on any ground. Our view finds full support from a recent Bench decision of this court in the case of Bahadori Mahto v. State of Bihar (C. W. J. C. No. 759 of 1975) (Pat). In that case the foodgrains of 3 different recorded cultivators who were the husband, wife and a son, but were mutated separately, in the revenue records, were seized by the authorities, which were stocked at one place, treating the same as the entire stock, belonging to only one of them. It was held in the aforesaid case that the whole approach of the respondents in seizing the entire stock treating the three petitioners, as a single cultivator was contrary to the provisions of the Order. In that case also all the three petitioners were living in the same house and their stock of foodgrains was found stored in only one room. It was specifically held that that would not make any difference in so far as the legal position was concerned.

8. We do not see any point in the fact that only petitioner No. 2 was present when the raid was made. The reason seems to be obvious. Four of the petitioners, namely, petitioner Nos. 4 to 7 are females. Petitioner No. 1 is the family deity of which petitioner No. 2 is the Shebait and the third petitioner was his son. In these circumstances it was but natural that petitioner No. 2 only might be present during that occasion.

Be that as it may. In any view of the matter, those circumstances could not be of any assistance to the respondents on account of the clear definition of the term

"cultivator". If the petitioners satisfied the basic condition that they were raiyats of separate holdings recorded in their individual name in the revenue records and were paying rents as such, that by itself was sufficient for them to be treated as a separate unit of "cultivator" for the purpose of the application of the provisions of the Order.

9. Learned counsel for the petitioners has further and in our view rightly contended that if this position is accepted the foodgrains seized were not liable for seizure for the simple reason that they were much below the total quantity to which the seven petitioners were individually to keep without any requirement of filing even any declaration.

10. Having, therefore, examined the entire scheme of the Order and the facts and circumstances of this case, we feel entirely satisfied that the action of the respondents was entirely misconceived on account of the initial mistake that the seven petitioners must be treated as one unit represented by petitioner No. 2. We would accordingly allow this application, set aside the impugned orders, namely, the order of seizure contained in An-nexure "3" series and that of sale (An-nexure "4") passed by the Sub-divisional Officer (respondent No. 1) and that on appeal (Annexure "6") by the Collector (respondent No. 2) by a writ of certiorari. The foodgrains in question would stand released. Let an appropriate writ issue accordingly, in the circumstance, however, we shall make no order as to costs.