

(2001) 03 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 4978 of 1998

Radha Krishna Trust

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 6

Citation : (2001) 2 PLJR 473

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Ram Suresh Roy and Ramesh Jha, for the Appellant; Jawahar Dhari Singh and Sanjay Prakash Verma, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—This Writ petition had been made a part of a bunch of cases by which matters relating to the exemption which could or could not be granted under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 had been challenged. Several petitioners including the present one had challenged certain provisions of the Act, in effect, contending that the provisions of the Act aforesaid are ultra vires to the Constitution. Making an attack straightaway on the vires of a legislation when the Act itself may have provided a self mechanism for redress, may not be an appropriate step. In the circumstances, the first question which the Court asked was whether a return as is contemplated u/s 6 of the Act had been filed. The reason the Court made this inquiry was because nothing had been averred in the writ petition whether the petitioner had filed the return contemplated u/s 6 of the Act and an adjournment was sought by counsel for the petitioner to receive instructions and in case the returns were filed to. lay the returns before the Court. Today a supplementary affidavit has been filed and it is accepted that the petitioner had filed the returns u/s 6 of the Act. In fact, what is appended as the order of the Collector, Madhubani dated 10 January, 1977 is upon the returns which were filed by the

petitioner.

2. Plainly, if the returns had been filed the first thing which the Court may examine is whether an order on the returns aggrieves a person is an alternate remedy available? From a plain reading of sub-section(3) of Section 32 of the Act, a revision would lie to the Board of Revenue.

3. It is, thus, that counsel for the petitioner made a submission that he is dropping the plea of challenging the vires of the Act and the matter may be examined on the record as has been presented. After the matter had been considered for some length, it was accepted that against the order dated 10 January, 1977, Annexure 3 to the writ petition, a revision lies.

4. The Court has perused the order. The first part relating to whether a holding would be permitted to the Trust known as Radha Krishna Trust, the matter was referred to the State Government and at the time of passing of the order the decision of the State Government was awaited. Thus, the Collector wrote that for the present, the area of the land, in context, would stand excluded for determining the surplus land held by the land holder. Further, in paragraph 3 of the order of 0.33 acres of land which was occupied by a temple this area was exempted from the total ownership of the land of the land holder. The rest of the order relates to the determination of ceiling in the hands of those recorded as land holders. On this the Court is making no comment. Suffice it to say that whether the Trust would be exempted or not, will also depend upon whether the Trust has been registered under the Religious Endowments Act 1863 or the Bihar Hindu Religious Trust Act, 1950, as the case may be.

5. Final allocation of the surplus has not been made even in the Collector's order. Yet, if the petitioner feels that he is aggrieved by this order the recourse to a revision is always available under subsection (3) of Section 32 of the Act aforesaid. As the petitioner is not raising the plea of ultra vires for challenging the provisions of the Act, the Court is permitting him to take recourse to the alternative remedy, provided he files a revision within one month from today which if done, the interim order which was passed by the Court on 3 July, 1998 will also remain, in operation for the period of one month as from today. With the aforesaid observations the record is consigned. As an alternative remedy is available, the petition is dismissed. No order on cost.

Shashank Kumar Singh, J.

I agree.