
(1993) 01 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5439 of 1992

Rajiv Kumar Thakur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Citation : (1993) 01 PAT CK 0010

Judgement

S.B. Sinha, J.—In this writ application the petitioner has prayed for issuance of a writ of certiorari for quashing an order dated 20th April 1992 in Land Ceiling Case No. 2 of 1973-74/3 of 1982-83 and as contained in Annexure-5 to the writ application whereby and whereunder the said proceeding was directed to be re-opened.

2. The fact of the matter lies in a very narrow compass.

One Sheetal Prasad Thakur was the land holder. The respondent No 4 is his son and the petitioner is the son of Respondent No. 4. In a proceeding initiated in terms of the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 two units were allotted one in favour of the petitioner and another in favour of the respondent No, 4. Sheetal Thakur died in the year 1984 and by an order dated 6;9-1988 (Annexure-1) it has been held that the petitioner became a major on 26-3-1984 and thus he became entitled to one unit in view of the decision of this court in Smt. Ramdulari Kuer and Ors. v. The State of Bihar and Ors. reported in 1976 BBCJ 641.

3. The learned Sub-divisional Officer in his order dated 6-9-1988 further found that as the lands in questions were Class IV lands, no surplus land is available at the hands of the family and thus he directed that the proceedings be dropped.

4. However, by an order dated 26-7-1988 the respondent No. 1 directed that the proceedings be reopened in view of the fact that admittedly the petitioner was a minor on 9-9-1970. The said order is contained in Annexure-2 to the writ petition.

5. A writ petition was filed by the petitioner in this court questioning the legality

of the aforementioned order dated 26-7-1988 being CWJC No. 5256 of 1988 and this court quashed the aforementioned order and directed the respondent No. 1 to issue notice to the petitioner and thereupon pass an appropriate order in accordance with law.

6. Thereafter a notice was issued to the petitioner and upon hearing him the respondent No. 1 passed the impugned order.

7. Mr. Yogendar Mishra, learned Counsel appearing on behalf of the petitioner has raised three contentions in support of this application.

8. The learned Counsel firstly submitted that in view of the provisions of the Hindu Succession Act, on the death of Sheetal Prasad Thakur, the petitioner become entitled to the lands in question and thus no illegality has been committed in allotting one unit in his favour.

9. The learned Counsel further submitted that in any event as at the time of death of Shri Sheetal Thakur the petitioner was a major and thus he became entitled to one unit.

10. The learned Counsel next contended that in any event as the surplus land at the hands of the family has to be determined with reference to the appointed day i.e. 9-9-70, the family should have been entitled to allotment of two units, namely, one unit for Sheetal Thakur and another unit for his son (respondent No. 4) and in that view of the matter also the question of reopening of the proceeding does not arise.

11. The learned Counsel in this connection relied upon a decision of the Supreme Court in Seth Nand Lal and Another Vs. State of Haryana and Others, , Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, and in State of U.P. Vs. Civil Judge, Nainital and Others, .

12. Mr. Hemendra Kumar Singh, learned Counsel appearing on behalf of the State, on the other hand, submitted that as admittedly the petitioner was a minor on 9-9-1970 no unit could have been allotted to him and in that view of the matter the respondent No. 2 must be held to have been committed an error on the face of the records and in that view of the matter the respondent No. 1 was entitled to reopen the proceeding in exercise of his power conferred upon him u/s 458 of the said Act.

13. The learned Counsel submitted that no unit could have been allotted in favour of Shri Sheetal Thakur by reason of an order dated 6-1-1988 as contained in Annexure 1 to the writ application as on that point of time Sheetal Thakur was dead.

14. It was further submitted that in any event the petitioner cannot be said to have been prejudiced by reason of the impugned order.

In view of the rival contentions of the parties the following questions arise for consideration:

(i) Whether in the matter of allotment of unit the age of a person has to be determined with reference to the appointed day namely, 9-9-1970 or not ?

(ii) Whether the surplus land available at the hand of the family is to be determined with reference to the appointed day namely, 9-9-1970 irrespective of the fact as to whether the land holder died subsequently or not?

15. Both the questions being inter-related are taken up for consideration together. From a perusal of the order dated 6-1-1988 as contained in Annexure 1 to the writ application, it appears that the question as to when the petitioner attained the majority was taken into consideration by the Respondent No. 2 and he came to the conclusion that in view of the materials placed on records, the petitioner became a major either on 3-2-1982 or 26-3-1982. He, therefore, held that in view of the definition of "family" as contained in Section 2 (ee) of the said Act, the petitioner would be entitled to one unit. On the other hand, the Respondent No. 1 in his impugned order as contained in Annexure 5 to the writ application held that the age of the petitioner should have been determined for the purpose of allotment of one unit with reference to the appointed day.

16. It is accepted that 9-9-1970 is the appointed date for purpose of determining the ceiling area. It is not in dispute that the petitioner was a minor on 9-9-1970. However, it appears that this Court in *Ganga Das & others v. State of Bihar & others*, reported in 1976 BBCJ 409 and *Nalini Ranjan Singh and Others Vs. The State of Bihar and Others*, held that the date which should be taken into consideration for the purpose of determining the question of the minority of a person is the date when the notice u/s 6(3) of the Act has published in the Gazette and not the appointed date.

17. The said Act was enacted to provide for fixation of ceiling, restriction of subletting and resumption of certain raiyats for personal cultivation of land, acquisition of status of raiyats by certain under-raiyat and at acquisition of surplus land by the State of Bihar and the matters connected therewith.

18. Section 2(ee) of the said Act purports minor children in relation to a family whose ceiling area is determined, u/s 4 with reference to the land held by it on 9th September, to mean a person who has not attained the age of 18 years on that date and in respect of further acquisition as contemplated in Section 18 the date on which the acquisition takes place.

19. Section 4(a) which was inserted by Act No. 22 of 1976 reads thus:

4(a) Fifteen acres, that is equivalent to 6.0705 hectares of land, irrigated or capable of being irrigated by flow irrigation work or tube-wells or lift irrigation which are constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law and which, provide or are capable of providing water for more than one season (hereinafter referred to as Class I land).

20. Section 5 declares that it shall not be lawful for any family to hold, except

otherwise provided under this Act land in excess of the ceiling area. The explanation appended to Section 5 provides that all lands owned or held individually by the members of a family shall be deemed to be owned or held by the family.

21. In the case relied upon by the learned Counsel appearing on behalf of the petitioner, the effect of amendment as carried out by Act No. 22 of 1976 whereby Section 2(ee) and Section 4 were amended, were not available. Thus, by reason of the subsequent amendment the aforementioned 1 decision must be held to be no longer available. This aspect of the matter has been considered by one of us in *Ramjee Mishra and Another Vs. State of Bihar and Others* wherein this Court took into consideration the amendment made in Section 2 (ee) and Section 4 of the said Act and held that in view of the subsequent amendment to the earlier Division Bench decision do not create any binding precedent.

In this view of the matter, there cannot be any doubt that the respondent No. 2 committed an illegality in holding that the petitioner become entitled to allotment of one unit although he attained majority either on 3-2-1982 or 26-3-1982.

22. There cannot, therefore, be any doubt that the relevant date for the purpose of determining the ceiling area with reference to the classification of the lands and otherwise must be done with reference to the appointed day. The Scheme of the Act clearly postulates that not only the classification but also the ceiling area has to be determined with reference to the appointed day, namely 9-9-1970.

23. In *Seth Nand Lal and Another Vs. State of Haryana and Others*, the Supreme Court upheld the validity of Haryana Ceiling on Land Holdings Act rejecting the contention that the definition of the family is artificial and double standard has been adopted for the ceiling area in the said Act. The Supreme Court held:

In fact, a provision like Section 4 (3) which makes for the augmentation of the permissible area for a family when the adult sons do not own or hold lands of their own but are living with the family has one virtue that it ensures such augmentation in the case of every family irrespective of by what personal law it is governed and no discrimination is made between major sons governed by different system of personal laws.

24. In *Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others*, , the Supreme Court was considering the scheme of Maharashtra Agricultural Land Ceiling on Holding Act and it was held that the death of person after the appointed day would make no difference so far as liability of his holding of the surplus land is concerned.

25. It was further held that the proceedings commencing with the return filed and the same could not be dropped merely because the land holder died before the final notification was issued. The Supreme Court observed:

The proceedings have to be continued and the surplus land in the hands of Bhikoba as on the appointed day should be determined and taken possession of

in accordance with law, The heirs of Bhikoba are entitled to participate in the said proceedings representing the estate of Bhikoba. They would be entitled as heirs at law only to such land that may remain after surrendering the surplus land as may be determined under the Act.

26. The aforementioned decisions were followed by the Supreme Court in *State of U.P. v. Civil Judge, Nainital*, reported in 1987 SC 16, it was held as follows:

Although the above decisions are rendered in cases arising under the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 the principle set out therein applies to all cases where there is an imposition of ceiling on lands held by land holders by land ceiling laws with effect from a specified date. In fact Rule 19 of the Rules framed under the Act which is referred to above also leads to the same view. Whatever surplus land was liable to be surrendered by a tenure-holder has to be determined as on 8-6-1973 and taken possession under the Act even though the tenure-holder might have died after 8-6-1973 and before such ascertainment.

We, therefore, do not agree with the view of the Prescribed Authority and the Civil Judge that for purposes of determining the surplus land the share of land in the hands of each of the heirs of Smt. Amna Begum should be treated as a separate unit for determining the surplus land. We hold that for purpose of deciding the surplus land which is liable to be surrendered from out of the Estate of Smt. Amna Begum, the relevant date that should be taken into account is 8-6-1973 on which date the ceiling on holdings was imposed and Smt. Amna Begum became liable to surrender the surplus land in accordance with the provisions of the Act, the heirs or legal representatives of Smt. Amna Begum together are entitled to retain out of the estate of Smt. Amna Begum only an extent of land equal to the area which Smt. Amna Begum could have retained in her hands after the imposition of ceiling on land holdings and are liable to surrender the surplus land. The High Court failed to consider this aspect of the question when it disposed of the writ petition.

27 Recently a Division Bench of this Court in *Arun Nath Shahdeo and Others Vs. State of Bihar and Others*, while interpreting similar provisions of the definition of a "family" as contained in Section 2 (f) (as it then was) of the Urban Land (Ceiling and Regulation) Act, 1976 inter alia relied upon the decision of the Supreme Court in *Nand Lal's case*, as also in *Vengadasalam Pillai Vs. Union Territory of Pondicherry*, and in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, and others decisions held:

However, it is well-known that a statute has to be interpreted taking into consideration its legislative intent. The charging section prohibits a person from holding vacant land in excess of one unit. The definition of family" as contained in Section 2 (f) of the Act, as noticed hereinbefore is an artificial definition. In *BhimsinghVs casej(supra)* the Supreme Court held that such a definition is valid and has been enacted taking into consideration, the current life style in urban

condition.

The provisions of the Act apply to the Hindus, Mohammedans and Christians alike

28. However, under the said Act no separate provisions exists for fixing of ceiling area in respect of a Hindu Joint Family. In view of the matter, the ceiling area was bound to be determined at the hands of Shetal Thakur.

29. In the discussions made hereinbefore, it is abundantly clear that Sheetal Thakur became entitled to allotment of one unit.

30. In this view of the matter, it is evident that both Sheetal Thakur and Sheoshankar Thakur became entitled to allotment of one unit each. Thus two units had already allotted to the family.

31. However, Sheetal Thakur died in 1984. The effect of death of Sheetal Thakur has to be determined in accordance with the provisions of Section 18 of the said Act. In terms of Section 3 of the Hindu Succession Act, the right, title and interest of Sheetal Thakur vested in his son Sheoshankar Thakur. Thus, the lands held by the family of Sheetal Thakur are required to be considered afresh upon taking into consideration the effect of devolution of Sheetal Thakur's interest in his heirs and legal representatives.

32. In this view of the matter, the impugned order whereby the proceedings were sought to be reopened only because it was held that Rajiv Kumar was a minor on 9-9-1970 and thus the family was entitled to be in possession of one unit is not correct. In this view of the matter, the impugned order is set aside and the matter is remanded back to the Collector only for the purpose of considering the effect of devolution of interest of Sheetal Thakur upon his heirs and legal representatives in terms of Section 18 of the said Act.

33. This application is, therefore, allowed to the extent mentioned hereinbefore and with the aforementioned observations and direction. In the facts and circumstances, there shall be no order as to costs.

34. I agree.