
(1978) 02 PAT CK 0015
In the Patna High Court
Case No : Civil Writ Case No. 1422 of 1977

Ram Ran Vijay Pd. Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 4, 4(b), 4(e)

Citation : (1978) 26 BLJR 639

Hon'ble Judges : S.K. Choudhary, J;S. Sarwar Ali, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sarwar Ali and S.K. Choudhary, JJ.—In this writ application, the petitioner prays for quashing of the orders contained in Annexures 1,2 and 3 in so far as they negative the claim of the petitioner that 22.59 1/2 acres of land are not to be treated as class V lands u/s 4 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of the Surplus Land) Act, 1961 (hereinafter to be referred to as the Act).

2. It may be stated that the learned Commissioner on appeal against the order passed by the Addional Collector directed remand and disposal of the case on remand in the light of the observations made in the judgment Annexure-2. Since the petitioner's claim that 22.59 1/2 acres of land have to be treated as Class V land was negated, the petitioner has filed this writ application. His0 real grievance is, therefore, only in relation to the extent as indicated above.

3. The case of the petitioner is that 22.59 1/2 acres of land are Diara land and, as such, they have been wrongly classified as Class II lands. It may be stated that the basis of classification of the lands is that the same can be irrigated through private tube-well. Learned Counsel for the petitioner first contended that the entire land has to be treated as Class V land, the same being Diara land and the relevant provision, which is applicable, is Section 4(b) of the Act.

Alternatively, it was contended that even according to the verification report, only part of the land had irrigational facilities on 9.9.1970. Thus, only, if at all, a part could be treated as Class II land and the rest as Class V land. The contention on behalf of the State is that since irrigational facilities are available in relation to the lands in question, the relevant provision, which is applicable, is Section 4(b) of the Act. Section 4(b) and (e) may now be quoted:

4. Fixation of Ceiling area of Land-The following shall be the ceiling area of land for one family consisting of not more than five members for the purposes of this Act:

** ** (b) eighteen acres, equivalent to 7.2846 hectares of land irrigated by such private lift irrigation or private tube-wells as are operated by electric or diesel power, and provide or are capable of providing water for more than one season (hereinafter referred to as Class II land).

** ** (c) thirty-seven and a half acres, equivalent to 15.368 hectares of Diara land, or chaur (hereinafter referred to as Class V land), or

Both "land" and "Diara land" have been defined in Sections 2(f) and 2(e) of the Act as:

2(f) "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or the homestead of a landholder ;

2 (e). "Diara land" means any land which is subject to diluvion or alluvion on account of any change in the course of a river or which lies between two embankments constructed to control a river and includes any land which may be surveyed as Diara land under the Bengal Survey Act, 1875 (Ben. Act V of 1975), or which after enquiry is declared as such by the Collector;

It would thus be seen that the definition of land is very general and comprehensive and may include "Diara land" as defined also. The contention of the Learned Counsel for the State thus is that since Section 4(b) relates to lands irrigated or capable of irrigation it includes "Diara land" also. As such, Diara land which is irrigated or capable of irrigation as envisaged in Section 4(b); the same has to be treated as Class II land and the ceiling area determined accordingly. We have already quoted Sections 4(b) and (e) and also their relevant definitions. Section (e) states that the ceiling area in relation to Diara land is thirty-seven and a half acres which is classified as Class V land. It is a well known canon of interpretation that where there are two provisions in an Act, one of which is specific or of a special character and the other of a general character the specific or special provision qualifies the general one and ought to be applied in preference to and unaffected by the general one.

Thus when there is a specific provision in an Act which covers particular case, it is not proper to apply another general provision, the application of which is not free from doubt. See *Kalipada Chakraborti and Another Vs. Palani Bala Devi and*

Others, . There are cases which have held that where a special provision deals with a particular thing or class of things, a more general provision even though its terms would cover the particular thing or class of things, is excluded from application thereto by reason of the particular provision. (See-cases mentioned in Note 5 at page 264 of Legislation and Interpretation by Jagdish Swamp, 1st Edn, 1968). Similar is the position here. Here the specific provision dealing with "Diara land" land would be applicable in preference to the provisions dealing with "land" generally, which includes Section 4(b).

4. It has to be noticed that in Section 4(d), it is stated that the said provision would apply to lands other than those referred to in Clauses (a), (b), (c), (e), (f). If the intention of the legislature was to exclude "Diara land", irrigated or capable of irrigation, from the purview of Section 4(e) of the Act, it could have easily so enacted in Section 4(e) by stating that the ceiling area would be thirty-seven and a half acres in respect of Diara land not covered by Section 4(a) and (b) etc. in the same way as it has done in Section 4(d) of the Act. The failure to do so leads to the conclusion that the intention of the legislature was to treat all Diara lands in a separate category and to fix the ceiling area in relation thereto at thirty-seven and a half acres.

5. During the course of argument, we put the question to the Learned Counsel for the petitioner as to what would be the rationale for treating all Diara lands in separate category although irrigational facilities may be available for such, lands or part thereof. The Learned Counsel explained that "Diara lands" as is well known, are subject to alluvion and diluvion. It is just possible that in one year, the whole or major portion of land may go under water, and this position may continue for several years. Thus though there may be irrigational facilities, yet due to the very nature of the land it may not be possible to avail of those facilities at all. It is because of all these reasons that Diara lands were placed in a separate and distinct category. Similar is the position with "chaur lands". In our view, the explanation given by the Learned Counsel for the petitioner appears to be quite reasonable and fits in with the reality of the situation.

6. It has to be observed that Section 180 of the Bihar Tenancy Act provides that the Collector may in circumstances mentioned in the section declare that any land has ceased to be chur or Diara land within the meaning of Section 180 of the Bihar Tenancy Act. This also shows that if the nature of the land changes, there is authority in the Collector to declare the land to have ceased the said character. If the lands which are subject-matter of the instant proceeding have changed their character, the appropriate remedy is provided under the Bihar Tenancy Act.

7. In the result, this application is allowed and it is held that "Diara lands" are covered by Section 4(e) of the Act. Consequently, the authorities, if satisfied that 22.59 1/2 acres of land are Diara lands, should treat those lands as Class V lands and determine surplus, if any, on that basis. We accordingly quash the orders contained in annexures 1 and 2 to the extent indicated above. The Additional

Collector will, therefore, determine whether the petitioner holds land in excess of the ceiling area in the light of the order passed by the learned Commissioner and in the light of this judgment. We direct the petitioner to appear before the learned Additional Collector on the 1st of March, 1978. On that date, another date should be fixed for hearing of the objection and disposal thereof in accordance with law.