

(1992) 01 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5361 of 1983

Ramjee Mishra and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Citation : (1992) 01 PAT CK 0017

Judgement

S.B. Sinha, J.—In this writ application the petitioner has prayed for quashing of an order dated 4-10-1980 passed by the respondent No. 4 and as contained in Annexure-7 to the writ application and the notification dated 12-4-1983 and as contained in Annexure-10 to the writ application whereby and whereunder the said authorities rejected the objections filed by the petitioners in exercise of their power conferred upon them u/s 10(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) and 1 acre of land was declared surplus by a notification issued u/s 15(1) thereof.

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

3. The petitioners are twin sons of one Sateshwar Mishra. The said Sateshwar Mishra was a landholder and he filed a return under the provisions of the said Act.

4. It was contended that the said landholder was a resident of village Koach, District Bhojpur and their family possessed and held 20 acres 59 1/2 decimals of lands situated in different villages. It was further submitted that 57 decimals land in plot Nos. 386, 387, 378, 379, 380 and 381 are in possession of the sikimidar and over and area of 39 decimals in plot No. 39 decimals in plot No. 37, there are standing houses of Harijans of the villages.

5. A proceeding being Ceiling case No. 71 of 1973-74 was initiated against the father of the petitioners and on the basis of a report made by the Anchal Adhikary, a draft publication u/s 10(2) of the said Act was prepared on 4-9-1974. An objection was filed by the original land holder alleging inter alia therein as

follows:

(i) He has got only 20.59/1/2 Acres of Land:

(ii) Out of the said land under Khata No. 93, plot No. 507, measuring 2 acres 36 decimals plot No. 521, measuring 1 Acre 2 decimals. Plot No. 522 measuring 1.08 acres (total 4.46 acres) are unirrigated lands and the Karamchari has given a wrong report;

(iii) Khata No. 94, plot No. 78 is 7 decimals in area and it is Class IV land ;

(iv) Land of Khata No. 48, Plot No. 77 is 10 decimals and Plot No. 78 measuring 4 decimals dih land and is Class V lands;

(v) Ramjee Mishra and Gorakh Nath Mishra, his two sons, were aged about 23 years and Karamchari had given totally wrong report to this extent that they are minors ;

(vi) There are 7 member in the family and according of law, there are 3 lands holders in the family.

6. The said landholder was murdered on 26-6-1975 and in that view of the matter no step was taken in the aforementioned case and an ex parte order was passed by the respondent No. 4 on 17-11-1975 declaring 6.32 acres as surplus land (Annexure-2).

7. An application was filed by the petitioners on 16-12-1975 for recalling the said order. However, on 23-1-1976 a fresh draft publication was made and on 24-5-1976 a fresh order was passed by the Land Reforms Deputy Collector. An appeal was preferred on behalf of the petitioners as against the said order and the appellate authority by an order dated 30th July, 1976 remitted the matter back to the respondent No. 4 with a direction that the mother of the petitioners late Sona Devi be noticed. Upon receipt of a notice in terms of the aforementioned order and objection filed by the mother of the petitioner on 23-9-1976 which is contained in Annexure-6 to the writ application.

8. The aforementioned Sona Devi mother of the petitioner died on 11-3-1990. By reason of the impugned order dated 4-10-1980 which is contained in Annexure-7 to the writ application. The respondent No. 4 held that the petitioners were minor on 9-9-1970 and thus was entitled to only one unit. He further held that the petitioners were in possession of 16 acres of class one land upon conversion classes 3 and 4 lands and thus 1 acre of land was held to be surplus at the hands of the petitioners.

9. According to the petitioner on 27-11-1983 they filed another objection before the respondent No. 4 (Annexure-9) but a notification u/s 11(A) of the Act was published in Gazette on 12-4-1983 which is contained in Annexure-10 to the writ application.

10. The petitioners came to learn that on 15-4-1983 an order was passed by the

Land Reforms Deputy Collector which is contained in Annexure-7 to the writ application, but no order was passed upon considering the objection filed on behalf of the petitioners.

11. The learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that from a perusal of Annexure-7 to the writ application it would appear that the respondent No. 4 himself has held that on 9-9-1970 the petitioners would not be aged more than 18 years.

12. The learned Counsel submitted that in view of the aforementioned finding of the respondent No. 4, himself, it must be held that the petitioners were entitled to 2 separate units. It was further submitted that in any event as after the death of their mother, the petitioners were not substituted, the impugned order must be held to be a nullity, as the same was passed against the dead person.

13. The learned Counsel appearing on behalf of the petitioner further submitted that the classification of the lands was not properly done and in any event, the petitioners were entitled to give their option in terms of the provisions of Section 9 of the said Act.

14. It appears that the petitioners themselves filed before the respondent No. 4 a school leaving certificates wherein their dates of birth were recorded as 28-1-1955.

15. From a perusal of the appellate order, as contained in Annexures-5 to the writ application it appears that the only submissions was made on behalf of the petitioners was that if they were found to be minors upon the death of their father, their mother should have been noticed.

16. The Additional Collector allowed the appeal filed on behalf of the petitioners only on the ground that a notice was required to be served on their mother in view of the fact that the petitioner were held to be minors.

17. The petitioners did not question that order. It is, therefore not possible to hold that the petitioners attained majority on 9-9-1970.

18. The learned Counsel appearing on behalf of the petitioner, however placed strong reliance upon a Division Bench decision of this Court in Nalini Ranjan Singh and Others Vs. The State of Bihar and Others, and submitted that in terms of the aforementioned judgment the relevant date which should be taken into consideration for the purpose of determination of the question of majority of the petitioners would be date when the notice under Sub-section (3) of Section 6 of the said Act was published in Gazette and not 9-9-1970.

19. On a first flush, the contention of the learned Counsel appears to be attractive, but the same does not stand a moment's scrutiny.

20. Section 2(eee) of the said Act defines "minor child" in relation to a family

whose ceiling area is determined u/s 4 with reference to the land held by it on 9th September, 1970 to mean a person who was not attained the age of 18 years on that date and in respect of future acquisition as contemplated in Section 18 the date of which the acquisition shall take place, Section 4 of the Act fixes ceiling area of the land for a family consisting of not more than 5 members as on the appointed date,

21. Section 2(eee) and Section 4 of the said Act were amended by Act No. 22 of 1976.

22. In Nalini Ranjan's case (supra), this Court relied upon its earlier decision in Ram Lal v. State of Bihar reported in 1976 BBCJ 409.

23. From a perusal of Nalini Ranjan's case it is evident that at the relevant time the definition of minor child was as follows:

Minor child means a person (male or female) who has not completed 18 years of age.

24. The fact that the learned Judges deciding Nalini Ranjan's case was concerned with interpretation to Section 2(eee) as it then stood and i. e. prior enactment of Act No. 22 of 1976 would be evident from the following:

That then leads us to the next question as to what would be the relevant date for the purpose of determining the minority or majority, of a child. Section 2(eee), as already quoted above, defines minor child as male or female who has not completed the age of 18 years.

25. Further, as noticed hereinbefore, even the charging section of the Act, namely, Section 4 also stands amended by reason of Act No. 22 of 1976.

26. It is not in dispute that the appointed day under the said Act is 9-9-1970. It is, therefore, clear that in view of the subsequent amendments in Section 2(eee) as also Section 4 of the Act the decision of this Court in Nalini Rajnan's case is no longer a binding precedent.

27. In this situation, I have no hesitation in holding that it was for the petitioner to show that they attained, majority on 9-9-1970 and not on the date when the notice under Sub-section (3) of Section 6 of the Act was published in the Gazette.

28. So far as the other questions raised by the learned Counsel for the petitioners are concerned, in my opinion, interest of justice will be sub-served if the petitioners are given an opportunity to file an application before the appropriate authority u/s 45-B of the said Act.

In such an application the petitioners can point out that they had not been given an opportunity to exercise their right of option.

29. It further appears that the predecessors in interest of the petitioners had also questioned the classification of lands and as to whether some of the lands have irrigational facilities or not.

30. This order is being passed in view of the fact that the petitioners have contended in paragraph 3 of the writ petition that some of the lands are in possession of the sikimidars and some lands are in possession of Harizans.

31. Admittedly, before passing the impugned order as contained in Annexure-7 to the writ application, the petitioners were not substituted in place of their mother. Had they been substituted, they could have raised before the respondent No. 4 the aforementioned contentions and could also contend that they had not been in possession of the any land in excess of the ceiling limit. Had such an opportunity been granted to the petitioners they could have also exercised their right of option.

32. Taking thus, all facts and circumstances into consideration, I am of the view that the petitioners may file an application u/s 45-B of the said Act which should be disposed of on their own merits upon consideration of the aforementioned fact.

33. This writ application is allowed to the extent mentioned hereinbefore and with the aforementioned directions.

34. However, the facts and circumstances of the case, there will be no order as to costs.