

(1999) 10 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 7976 of 1991

Rampur Catholic Mission

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 29, 29(1)(b)(v)

Citation : (2000) 4 PLJR 155

Hon'ble Judges : S.N. Jha, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : K.M. Joseph, for the Appellant; Hemendra Prasad Singh and Satyendra Kr. Sinha for the State, for the Respondent

Judgement

S.N. Jha, J.—The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (the Act" for short) has been enacted, inter alia, to provide for fixation of ceiling of land and acquisition of surplus land by the State. Section 29 thereof provides for certain exemptions. In this writ petition the controversy relates to the extent of exemption under item (v) of clause (b) of Section 29 (1) of the Act. The facts so far as relevant for deciding the controversy, briefly stated, are as follows. Pursuant to a public notice issued u/s 6 of the Act, Rampur Catholic Mission Society, Rampur, West Champaran i.e. the petitioner herein, filed return of lands held by it to the extent of 230.15 acres. As per return it held 199 43 acres cultivable lands of class II, 1220 acres homestead land of class IV. 668 acres of Orchard and Baswari of class IV. 1.60 acres of Graveyard and 10.24 acres. Kharaur land of class IV, On the basis of the said return L.C. case No. 104/1973-74 was initiated. After enquiry held in terms of rule 9 of the Bihar Land Reforms (Fixation of the Ceiling Area and Acquisition of Surplus Land) Rules, 1963, ("the Rules for short), the Collector, West Champaran sent his recommendation to the State Government for exemption of 86.82 acres of land u/s 29 (1) (b) (v) of the Act on 14.5.77. On 14.6.80, the Government returned the recommendation observing that it had not taken into account the

actual income and expenditure of the petitioner-society. There is a small dispute as to whether the said letter of the Government was in response to recommendation sent by the Collector vide his letter dated 14.5.77 or his earlier letter dated 28.12.76. In view of my conclusions on the main question involved, it is not necessary to go into that dispute. On 26.4.83, the Collector made a fresh recommendation with respect to 187.78 acres. According to the petitioner, recommendation this time was made on the basis of actual expenditure and income of the society. On 15.4.85, vide letter no. 1024 the Under Secretary, Department of Revenue and Land Reforms, informed the Collector that the Government had approved the earlier recommendation contained in his letter/report dated 14.5.77 to the extent of 86.82 acres of land. The Additional Collector, Land Ceiling, West Champaran, thereafter on 8.10.87 passed order determining the ceiling area of the petitioner. The petitioner preferred appeal before the Collector being Revenue appeal No. 133/1987-88. By order dated 7.1.90, the Collector dismissed the appeal observing that although he had recommended exemption of 187.78 acres of land, the Government had approved exemption of only 86.82 acres. The petitioner thereafter unsuccessfully moved the Board of Revenue and finally came to this Court in the present writ petition.

2. Shri K.M. Joseph, learned counsel for the petitioner submitted that u/s 29 (1) (b) (v) of the Act, the authorities are merely required to find out the extent of land held by the public or charitable bodies on the date of commencement of the Act, and not to make any determination of their requirement on the basis of income or expenses. The entire exercise being contrary to law, the impugned orders are fit to be quashed. Alternatively, he submitted that in view of the provisions of Section 32B incorporated in the Act by Bihar Ordinance 55/82, replaced by Bihar Act 22/82, the orders earlier passed by the Collector and/or the State Government prior to the amendment stood wiped out. The recommendation of the Collector contained in his letter dated 14.5.77 and the Government order contained in department letter dated 14.6.80, therefore did not exist in the eye of law, and no such order as the one contained in the subsequent letter of the department dated 15.4.85 could thus be passed in terms of the said recommendation dated 14.5.77. Since a fresh recommendation with respect to 187.78 acres of land had been made by the Collector on 26.4.83, i.e. after coming into force of Bihar Act 22/82, the State Government was required to pass an order on that recommendation. What the Government, instead, did was to accept the earlier recommendation contained in letter dated 14.5.77 which did not exist in the eye of law. In support of contention that all proceedings pending on the date of coming into force of Bihar Ordinance 55/82 or Bihar Act 22/82 abated in terms of the provisions of Section 32B of the Act and the matter had to proceed de novo, reliance was placed on a decision of the Full Bench of this Court in Harendra Prasad Singh vs. State of Bihar & and., AIR 1985 Pat 13 : 1984 PLJR 908.

3. On behalf of the respondents Shri Hemendra Prasad Singh submitted that Section 32B contemplates abatement of proceeding other than appeal, revision,

review or reference in which final publication u/s 11 (1) of the Act had not been made, and not any enquiry under rule 9 of the Rules. Since the matter regarding exemption u/s 29 of the Act depends on the result of enquiry under rule 9 and no proceeding within the meaning of Section 10 of the Act was pending on the date of Ordinance/Act, the provisions of Section 32B were not applicable and thus the orders passed earlier by the Collector or the State Government cannot be said to have become non-existent in view of those provisions. Dealing with the rationale of the provisions of Section 32B of the Act, counsel pointed out that the abatement of pending proceedings become necessary because of large scale amendments introduced in the Act by the said Ordinance/Act, including the amendment in Section 5 which contains the charging provision of the Act. He relied on a decision in *Bishun Rai & and. vs. The State of Bihar and ors.*, 1993 (2) BLJ 276. As regards the other contention that the entire land held by a public or charitable institution on the date of commencement of the Act is to be excluded, Counsel submitted that they can be allowed to retain only so much of land which is actually required by them to carry out the purposes depending on their actual expenses and income. Counsel submitted that in the present case, the State Government has already taken a conscious decision to approve the earlier recommendation contained in letter dated 14.5.77 which had been duly made by the Collector. The plea that no decision has been taken on the later recommendation contained in letter dated 26.4.83 is thus not correct. It was pointed out that in terms of the order of the State Government contained in letter dated 15.4.85, the ceiling area of the petitioner was duly determined and notifications were accordingly issued in 1985 itself.

4. Two questions arise for consideration in this case (a) whether public or charitable bodies mentioned in Section 29 (1) (b) (v) of the Act are entitled to exemption on the basis of their actual requirement as contended on behalf of the respondents, or the lands actually held by them on the date of commencement of the Act are to be excluded altogether as contended on behalf of the petitioner and (b) whether an inquiry under rule 9 of the Rules would abate in view of the provisions of Section 32B of the Act.

5. The question (a) is the main question and I propose to deal with the same first. It is obvious that if that question is answered in favors of the petitioner and it is held that the land held by it on the date of commencement of the Act is required to be excluded from the application of Section 5 of the Act, it will not be necessary to answer the second question.

6. Before noticing the relevant provisions of Section 29, it would be appropriate to refer to Section 5 which constrains the charging provision, so far as relevant, as under :

No person to hold land in excess: of the ceiling area.-(1) (i) It shall not be lawful for any family to hold, except otherwise provided under this Act, land in excess of the ceiling area.

Explanation.-

(ii)

The term "family" has been defined in Section 2 (ee) of the Act as follows:-

"family" means and includes a person, his or her spouse and minor children;

Explanation I.-In this clause the word person includes any company, in situation, trust, association or body of individuals whether incorporated or not

Explanation II.-

Adverting to Section-29, item (v) or sub-section (1) (b) which falls for interpretation in this case is as follows :

29. Exemptions.-(1)(a) The provisions of this Act shall not apply to-

(b) The provisions of Section 5 and Section 28, shall not apply to-

(v) such extent of land held on the date of commencement of this Act, by such public or charitable bodies or religious institutions of public nature, running educational institutions, hospitals, maternity homes and Orphanages as may be notified by the State Government in this behalf, so long as they continue as such;

7. The submission of Shri Joseph on behalf of the petitioner is that the words "such extent of land" should not be read in isolation, it should rather be read in conjunction with the words immediately following i.e. "held on the date of commencement of this Act" and so read, it would appear that the Act contemplates exclusion of the land held by the public or charitable bodies of the description mentioned in the clause. He submitted that where the words of the statute are plain and simple, the court is not supposed or required to make any other interpretation. On behalf of the respondents, on the other hand, it was submitted that the words "such extent of land" have to be read along with the words "as may be notified by the State Government" occurring in the clause and therefore, the discretion remains with the State Government to determine the extent of land u/s 29 (1) (b) (v).

8. I have considered the submission of the counsel for the parties and I am of the view that the submission advanced on Behalf of the petitioner is well founded and must prevail. This becomes evident from a conjoint reading of the other provisions contained in Section 29 itself as well as the provisions of rule 9 of the Rules. To facilitate a conjoint reading of the relevant provisions I consider it proper to quote the provisions already quoted above, even at the cost of repetition, apart from the other provisions with necessary emphasis as herein below :-

29 (1) (a) The provisions of this Act shall not apply to-

.....

.....

(b) The provisions of Section 5 and Section 28 shall not apply to-

(i)

(ii)

(iii)

(iv) such extent of land held on the date of commencement of this Act, by Educational Institutions, Universities, Research Councils or Research Institutes recognized by the State, hospitals, maternity homes and Orphanages, as may be notified by the State Government in this behalf, so long as they continue as such;

(v) such extent of land held on the date of commencement of this Act, by such public or charitable bodies or religious institutions of public nature, running educational institutions, hospitals, maternity homes and Orphanages as may be notified by the State Government in this behalf, so long as they continue as such;

....

....

2(a) The State Government may, by notification in the official Gazette, exempt from the operation of Section 5-

Sugarcane farms owned and operated on the date of commencement of this Act, by sugar factories holding a license under any law relating to factories for the time being in force, to such extent as may be determined in the prescribed manner to be necessary for the production of sugarcane seeds but in no case exceeding one hundred acres;

(ii) So much of land not exceeding fifteen acres of Class I land or equivalent area of other classes owned and held under personal cultivation by any religious institution of a public nature on the date of the commencement of this Act, as may be determined by the Collector of the district in the prescribed manner to be necessary for the purposes of performing religious rites and maintenance of the religious institutions,

(b) (emphasis added)

9. It would thus, appear that the Act contains different kinds of provisions with respect to public or charitable bodies other than religious institutions of public nature, running educational institutions, hospitals, maternity homes and Orphanages coming under item (v) of Section 29 (1) (b) of the Act as distinct from religious institutions of public nature coming under item (ii) of Section 29 (2) (a). While in the case of religious institutions of public nature there is a clear provision in Section 29 (2) (a) (ii) regarding determination of the extent of land (not exceeding 15 acres of class I land or equivalent area of other classes) as may be necessary for the purposes of performing religious rites or maintenance

of the religious institutions, there is no such provision regarding similar determination in the case of public or charitable bodies other than religious institutions, in Section 29 (1) (b) (v). In the case of Sugarcane farms also, it would appear, there is similar provision regarding determination of the extent of land (not exceeding 100 acres) as may be necessary for the production of the sugar seeds. Another point of distinction between the two sets of provisions is that while Section 29 (1) (b) provides for "exclusion" of the provisions of Section 5 and Section 28 of the Act, Section 29 (2) (a) provides for "exemption" from the operation of Section 5.

10. It would thus, appear that the Act does not treat public charitable institutions and religious institutions of public nature at par. While in the case of the former, the provisions of Section 5 are not applicable, that is to say, the bar created by Section 5 as to the extent of holding land beyond the ceiling area itself is not applicable, in the case of the latter i.e. in the case of religious institutions of public nature and sugarcane farms, the Act provides for exemption of so much of land as may be necessary for the purposes of performing religious rites etc in the case of religious institutions and, for the purposes of production of sugarcane seeds in the case of sugarcane farms. From the conjoint reading of the provisions it is thus evident that inquiry with respect to the requirement is warranted and permissible only in respect of sugarcane farms and religious institutions of public nature.

11. Rule 9 of the Rules also leads to the same conclusion. Before making the comment, it would be proper to quote Rule 9 in extenso as under :

9. Declaration of the land exempted from the operation of Section 5.-(1) After the information given by or on behalf of the land-holder under Sections 6, 8 or 9, to the information obtained u/s 7 has been checked and verified in the manner prescribed in Rule 8, the Collector shall, after giving the parties a reasonable opportunity of being heard and adducing evidence, hold enquiry regarding the land in respect of which exemptions from the operation of Section 5 have been claimed under items (i). (iv). (v). (vi), (vii) or (viii) of clause (b) of sub-section (1) or under item (i) or (ii) of clause (a) of sub-section (2) of Section 29 and thereupon :-

(i) in respect of exemption claimed under item (i), (vii) or (viii) of clause (b) of sub-section (1) of Section 29, pass necessary orders, declaring the area and description of the land exempted under one or more of the said items;

(ii) in respect of exemptions claimed under items (iv), (v) and (vi) of clause (b) of sub-section (1) or item (i) or (ii) of clause (a) of sub-section (1) or item (i) or (ii) of clause (a) of sub-section (2) of Section 29 forward the evidence, if any, adduced before him and his enquiry report together with his recommendations in this regard to the Collector of the district who shall, after perusing the same and after giving the parties concerned a reasonable opportunity of being heard :-

(a) determine the area and description of the land which should be exempted

under item (ii) of clause (a) of sub-section (2) of Section 29 and forward his recommendation in this regard to the State Government;

(b) forward his recommendation to the State Government in respect of exemption claimed under items (iv), (v) or (vi) of clause (b) of sub-section (1) or item (i) of clause (a) of sub-section (2) :

Provided that in respect of item (i) of sub-section (2) of Section 29 of the Act Collector shall not recommend exemption at the rate exceeding one acre for every ten thousand quintals or part thereof the annual requirement of sugarcane of the factory concerned under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1969 (Act VII of 1969) subject to maximum of one hundred acres.

(2) While forwarding his recommendations to the State Government, the Collector of the district shall also send the evidence, if any, adduced before Collector and enquiry report and the recommendation of the Collector.

(3) On receipt of the recommendations from Collector of the district and the papers mentioned in sub-rule (2), and after considering the same, the State Government shall issue the necessary notification specifying the area and the description of the land exempted from the operation of the land exempted from the operation of Section 5 under items (iv), (v) or (vi) of clause (b) of sub-section (1) or under item (i) or (ii) of clause (a) of sub-section (2) of Section 29, and the period for which such exemption shall continue.

12. From the above provisions, it would appear that with respect to items (i), (vii) and (viii) of Section 29 (1) (b) the Collector under the Act is empowered to pass final order after holding enquiry giving opportunity of hearing with respect to other items, he is required to submit his enquiry report together with his recommendation to the Collector of the district. The Collector of the district after giving a further opportunity of hearing to the parties can determine the area and description of land to be exempted u/s 29 (2) (a) (i) alone i.e. with respect to only religious institutions of public nature; with respect to the rest, he is required to forward his recommendation to the State Government. Thus in the case of public or charitable institutions covered by Section 29 (1) (b) (v), amongst others, he is not empowered to make any determination. In other words, while in the case of religious institutions, the Collector is empowered and required to "determine" the ceiling area in the case of non-religious public or charitable institutions, he is required to merely forward his recommendation.

13. The rule also thus provides for different procedure to be followed in the case of religious institutions and non-religious charitable public institutions. It is true that the rule uses the same expression "exemption" and "recommendations" with respect to non-religious public or charitable institutions. But as already indicated above, the concept of "exemption" is relevant and the provision is applicable only to sugarcane farms and religious institutions falling within the ambit of items (i) and (ii) of Section 29 (2) (a). With respect to public or charitable institutions of non-religious nature, the provisions of Section 5 do not apply altogether. It is

well settled that if there is any inconsistency between the provisions of the Act and those of the Rules, it is the former which is to prevail. The use of the term "recommendation", it may be observed, appears to be rather innocuous. The term recommendation in the context has to be read as report. The rule as, indeed, the Act itself contemplates that it is the State Government which is competent to make the notification. The Collector is merely required to submit his report as to the extent etc. of land to be notified by the State Government in that behalf. Such a report is to be submitted by him after giving opportunity of hearing at his own level in addition to the inquiry already held by the Collector under the Act who may be the Anchal Adhikari or the Deputy Collector empowered in that behalf.

14. In the light of the above discussions, it would follow that the concept of "actual requirement" is foreign to Section 29 (1) (b) (v) like in the case of educational institutions, universities etc. specified in item (iv) of that clause but unlike sugarcane farms and religious institutions mentioned in items (i) and (ii) of Section 29 (2) (a). It is only in the case of the later i.e. in the case of sugarcane farms and religious institutions that "exemption" is to be granted on the basis of actual requirement. Since in the present case everything has been done and different orders passed treating the case to be one of exemption on the basis of requirement, to be precise, on the basis of actual income and expenditure incurred by the petitioner-society, it is obvious that they are not in accordance with the Act and therefore, fit to be quashed. The entire exercise has been made for "determining" the actual requirement on the basis of the income and expenditure what the authorities were required to do was to find out the extent of land (land within the meaning of the Act), held by the petitioner-society on the date of commencement of the Act. The plea of the petitioner in this regard, therefore, must be accepted.

15. In fairness to the petitioner of must notice the decision in the case of Dr. Ajay Pradhan vs. State of Madhya Pradesh, AIR 1988 Supreme Court 1875. relied upon by the counsel in support of the contention that that where the words used in the statute are plain and simple the court is required to interpret them in their ordinary sense and not to give its own interpretation applying any other rule of interpretation. The following observations occurring in the judgment may use fully be quoted :-

A rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider.

The point at issue being so well-set tied it is not necessary, to refer to other decisions which are available in plenty

16. To conclude, the provisions of Section 5 are not applicable to public of charitable institutions of the description mentioned in Section 29 (1) (b) (v) or the Act. There is thus no question of granting exemption on the basis of their actual requirement to them. The enquiry contemplated in the Rules is not meant to determine the extent of exemption but to find out the extent of land held by them on the date of commencement of the Act. Subsequent acquisitions may, however, stand on a different footing. In the above premises, the impugned orders and the notifications are quashed and the matter is sent back to the Collector, West Champaran to proceed de novo in accordance with law and in the light of this judgment. There will be no order as to costs.

Gurusharan Sharma, J.

I agree.