
(1989) 10 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 2447 of 1985

Randhir Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1990) 1 BLJR 167 : (1990) 2 PLJR 330

Hon'ble Judges : Birendra Pd. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Birendra Pd. Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India in which a prayer has been made for the issuance of a writ of certiorari quashing Annexures "4" "5" and "6" of the writ petition. Annexure-4 is an order dated 31.8.1982/14.10.1982 passed by the Additional Sub-divisional Officer, Purnea in Land Ceiling Case No. 1170/-73-74. Annexure-5 is an order dated 27.2.1984 passed by the Additional Collector Land Reforms, Purnea dismissing the appeal of the petitioner, Annexure-6 is an order dated 12.3.1985 by the Additional Member, Board of Revenue by which his revision petition was dismissed.

2. According to the petitioner, Shri Ambika Prasad Choudhary, his father died in the year 1960 leaving behind his two widows, namely, Sobha Devi and Chandrakala Devi. He had two daughters, namely, Nirmala Devi and Sanjukta Devi from Ram Sobha Devi and two sons Randhir Choudhary (petitioner) and Prem Kumar Choudhary and three daughters Kiran, Hira and Nutan from Chandrakala Devi. A case under the Land Ceiling Act was started against the petitioner some times in the year 1973 when he was noticed u/s 8(1) of the Ceiling Act. A draft publication was made, objections were invited and the petitioner filed an objection u/s 10(3) of the said Act. According to the draft publication, the family of the petitioner held 209.99 acres of land, out of which

the petitioner was allowed to retain 61.35 acres and the rest 148.64 acres of lands were declared surplus. He was allowed two units, one unit for Ram Sobha Devi, her daughters Nirmala Davi, Sanjukta Devi and other for Chandrakala Devi and her sons Randhir Choudtory, Prem Kumar and daughter Kiran. According to the petitioner, Nirmala Devi and Sanjukta Devi, the two married daughters of Ambika Prasad Choudhary through Ram Sobha Devi were also entitled to separate units and Kiran, daughter of Chandrakala Devi as also Hira one unit each as on 9.9.1970 they have attained majority. However, the Additional Sub-divisional Officer, who decides their objections vide order dated 31.8.1982 allowed four units one unit to the petitioner, one unit to his brother Prem Kumar and one unit each to Ram Sobha Devi and Chandrakala Devi. So far Nirmala Devi and Sanjukta Devi, the two married daughters from Ram Sobha Devi were concerned, it was found that although they had become majors on 9.9.1970 but since there had been a notional partition in the family the Additional Sub-divisional Officer gave them 1/20th share in the property of late Ambika Prasad Choudhary. In other words, they were each given 10 1/2 acres of land. No separate unit was allowed to them. Kiran, Hira and Nutan, the three daughters of Chandrakala Devi were found to be minors and, therefore, not entitled to any separate unit. Since no objection has been raised as regards classification at the time of hearing before the learned Additional Subordinate Officer, he did not pass any order on the same. Ultimately, the petitioner was found entitled to possess 121 acres of Class III land. 73.59 acres of land was found surplus out of which 13.71 acres had already been acquired.

3. As stated above, this order was maintained in appeal and revision by respondents Additional Collector and Additional Member, Board of Revenue.

4. Learned Counsel appearing on behalf of the petitioner submitted that separate units should have been given to Nirmala Davi and Sanjukta Dsvi, daughters of Ambika Prasad Choudhary through Ram Sobha Devi also. In this connection, he referred to the definition of family given in Section 2(ee) of the Bihar Land Ceiling Act, 1962, according to which family means and includes a person, his or her spouse and minor children. The submission of the learned Counsel for the petitioner is that Nirmala and Sanjukta were members of the family of Ambika Prasad Choudhary and were majors and were, therefore, entitled to separate unit. The admitted position is that both Nirmala Devi and Sanjukta Devi were married during the life-time of their father who died in the year 1960. It is well-established that according to the Hindu Law, a daughter after her marriage ceases to remain a member of her father's family. She becomes a member of her husband's family. It is only after the passing of the Hindu Succession Act, 1956 that a daughter married or unmarried has become entitled to a share in their father's property on his death. In a Hindu family governed by the Mitakshra Law, the son and the grandson acquires a right in the property along with their father. The daughter does not acquire any such right. She acquires a right in the share of her father only on the death of her father along with other heirs. The authorities below recognised that right and they rightly gave share to Nirmala

and Sanjukta in the property of Ambika Prasad Choudhary. They also rightly rejected the petitioner's claim for separate unit for Nirmala and Sanjukta as they cannot be held to be members of the family of the land-holders after their marriage.

5. Learned Counsel tried to place reliance on a Full Bench decision of this Court in the case of the State of Bihar v. Sri K.M. Zuberi and Ors. 1986 PLIR 67 That decision is of no help to the petitioner, as it decides entirely a different question.

6. So far as unit to Kiran and Mira, the two daughters from Chandra Kala Devi is concerned, the concurrent finding of all the authorities is that they were minor as on 9.9.1970. It was submitted that the medical evidence produced on their behalf was not considered. After the authorities have given such a concurrent finding, it is not open for this Court in its writ jurisdiction to investigate this fact again. This submission of the learned Counsel was also rightly rejected.

7. So far as the question of classification for the land is concerned, it may be stated here that no objection was raised on behalf of the petitioner regarding the classification of land at the time of argument before Additional Sub-divisional Officer, as will appear from Annexure-4. The learned appellate Court also rightly rejected the petitioner's case as regards classification since he had not raised any objection at the initial stage. It is not possible for me to entertain this question at this stage.

8. It will appear that an application was filed on 10.10.1985 by Nirmala Devi, Sanjukta Devi, Kiran Devi, Hira Kumari, Nutan Kumari and Prem Kumar Choudhary through Shri Ajit Kumar Singh, Advocate for impleading them as intervenors in this case. I have looked into the order sheet of the case and I find that no orders had been passed in this application until now, Till the case has been heard on two dates but Shri Ajit Kumar Singh has not been present in Court to press this application. This application for intervention is, accordingly, dismissed.

9. Learned Counsel for the petitioner has submitted that the petitioner should be given the option to select his land. It is for the first time that this submission is made before this Court. From the three orders passed by the different authorities, I do not find that any such right was ever exercised by the petitioner. It is really fantastic that the petitioner should go on making such belated claims after such a long time. It should be remembered that the ceiling proceeding started some time in the year 1973 and it is about more than 16 years that he has come up with the plea that he should be given the option to select the land. This is only with the purpose for delaying the proceeding. This submission of the learned Counsel is also rejected.

10. Having considered the facts and circumstances of this case and the arguments advanced by the learned Counsel for the petitioner, do not find any merit in this writ application and the same is dismissed with costs, Hearing fee Rs. 500/- (Rupees five hundred).