
(1998) 08 PAT CK 0056

In the Patna High Court

Case No : C.W.J.C. No's. 1103 and 1077 of 1998

Saraswati Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Citation : (1998) 3 PLJR 340

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Bhupendra Narain Sinha and Shailendra Kumar, for the Appellant;
S.J. Rahman, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—Both the writ petitions arise out of common land ceiling proceedings, so they were hoard together and are being disposed of by this common order.

2. In the aforesaid cases, the Petitioners have challenged the orders passed by the revisional authority (Board of Revenue) in Revision Case Nos. 208/85 and 209/85, whereby and where under the appellate order and the finding of the original authority were affirmed.

3. According to the Petitioners, Land Ceiling Case No. 4/76 was started against deceased Petitioner No. 1, Pabitra Tiwary (substituted by heirs), in which land holder filed return u/s 6 on 16th August, 1976. Subsequently, draft statement was published on 5th February, 1978, wherein 21.93 acres of lands were declared surplus after allowing 5-1/10 units in favour of land holder's family. Subsequently in view of insertion of Section 32A fresh draft statement was published on 12th November, 1982 again showing aforesaid lands as surplus to which the land holder filed objection u/s 10(3). Thereafter, the Additional Collector passed order on 1st July, 1983 allowing 51/10 units in favour of land holder's family. Some of the objections of the land holder were allowed and

16.40 acres of lands were declared surplus. Appeal No. 12/83 was preferred by land holder-deceased Petitioner No. 1. The State of Bihar after expiry of limitation also filed an Appeal No. 4/84 challenging the majority of Petitioner No. 5. Both the aforesaid appeals were heard together and by common order dated 7th May, 1985, the appellate authority held the Petitioner No. 5, Pankaj Kumar Tiwary, as minor on the relevant date 9.9.70, accepting the ground taken by the State and four units were allowed in favour of the Petitioners. The Revision Case Nos. 208/85 and 209/85 which were preferred by Petitioners against the aforesaid common order passed in two appeals aforesaid were heard together along with another revision case and it was remitted to the appellate court for re-determination of age of Petitioner-Pankaj Kumar Tiwary after placing the matter before a Medical Board with liberty to the parties to led evidence in their support. The appellate authority referred the matter to the Medical Board and on receipt of such report, the appellate court recorded the finding in favour of Petitioner-Pankaj Kumar Tiwary and referred the matter to the revisional authority. However, the revisional authority did not accept the subsequent findings based on the report of Medical Board and dismissed both the revision applications by impugned order dated 22nd September, 1997 affirming the earlier order passed by the appellate authority.

4. The grievance of the Petitioners was mainly raised with respect to the appeal which was preferred by the State being Appeal No. 4/84 and with respect to decision relating to majority of Petitioner No. 5, Pankaj Kumar Tiwary, it was submitted that the appeal being time barred, In absence of an order for condonation of delay, the appellate authority could not have passed any order on the same. Further, according to the Petitioners, even if the report of the Medical Board was not based on any ossification test, the revisional authority could not have discarded the same without any valid reason. Reliance was placed on a decision of this Court reported in Ramjee Mishra and Another Vs. State of Bihar and Others , to show the onus of proof was with the State to show the Petitioner Pankaj Kumar Tiwary as minor and not for the party to show that he was major.

5. With regard to other writ petition, the Petitioners have raised the question relating to classification of land, as shown in the appellate order and have also raised the question relating to annulment of sale deed of the year 1963 with respect to sale of plot No. 2178. They have also made grievance that the lands earlier transferred in favour of deities have been included.

6. So far as the first case, C.W.J.C. No. 1103/98 is concerned, therein the sole question to be determined was the age of Pankaj Kumar Tiwary as on 9.9.1970. Admittedly, in absence of specific evidence, earlier the revisional authority referred the matter for examination of said Petitioner through a Medical Board. The Medical Baord gave its findings and assessed the age of said Petitioner to be in between 40 years to 45 years. The revisional authority discarded the same merely on the basis of objection as was made by the counsel for the State that such report was not based on supporting evidence. The date as was recorded in

the School Leaving Certificate was also discarded, as the Head Master of the Lakshmi High School, Sitamarhi replied that the Register of the said period was not available. The Municipal record, in this respect, was also not taken into consideration as the Executive Officer, Sitamarhi Municipality intimated that the concerned record was not available in his office to verify the date of birth of Pankaj Kumar Tiwary.

7. Now it is a settled law that the Matriculation certificate cannot be stated to be an authentic document to verify the exact age of a person and in such a case, the authority may verify the age on examination through a Medical Board. Generally such examination by a Medical Board based on ossification test is accepted as valid.

In the present case, the Medical Board reported the age of Petitioner-Pankaj Kumar Tiwary to be between 40 to 45 years. In the aforesaid circumstances, there was no occasion for the authorities to disbelieve the same, in absence of any other document. If the basis of such report was not enclosed with the Medical report, the authority should have asked the Medical Board to give details of evidence/basis on which such report was submitted and only thereafter an opinion should have been formed by the authorities.

8. As in the present case, the aforesaid procedure was not followed by the revisional authority. I set aside the impugned revisional order passed in Revision Case No. 209/89 so far as it relates to decision with respect, to age of Petitioner-Pankaj Kumar Tiwary is concerned, and remit the matter to the revisional authority to decide the same on the basis of the report submitted by the Medical Board. If the revisional authority wants to differ with such finding or wants to know whether the same is based on ossification test, or not, in that case, the authority will have to give reason for the same and, if necessary, may call for a report of ossification report. If no ossification test was done by the Medical Board, the revisional authority should remit the matter to the Medical Board for a fresh test after following the ossification test of said Petitioner.

9. The revision case stands remitted to the revisional authority to decide the question relating to age of Pankaj Kumar Tiwary in the manner, as indicated above. It is expected that a decision, in this respect, is taken on an early date preferably within a period of six months from the date of receipt/production of a copy of this order.

10. So far as the other writ petition, C.W.J.C. No. 1077/98 is concerned, the Petitioners have failed to show the illegality committed by the authorities in the matter of classification of lands. The finding being based on report submitted by Anchal Adhikari, in absence of specific pleadings and evidence contrary to the same, the Petitioners cannot challenge the same, as shown in the impugned order.

11. So far as annulment of sale deed of the year 1963 is concerned, it is not the case of Petitioners that the same was annulled without hearing the vendees and

the Petitioners. Nothing substantial pleading has been made to set aside the finding of the authorities in this respect.

12. So far as the lands transferred in favour of the deities are concerned, the Petitioners cannot make any grievance with respect to the same. If they were clubbed together and declared surplus, the Petitioners, if so choose, may not opt such lands. It is the deities or the Sebaitis, who may raise any grievance, but they are not parties to the writ petition.

13. Accordingly, I find no merit in the present case and for that the writ petition, C.W.J.C. No. 1077 of 1998 is dismissed.

14. Finally, the outcome of both the cases is that C.W.J.C. No. 1077 of 1998 is dismissed and the writ petition, G.W.J.C. No. 1103 of 1998 is disposed of in terms with the observations and directions, as made above.