

(1977) 01 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 2113 and 2234 of 1976

Sheobachan Giri and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1977

Acts Referred:

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

Citation : AIR 1977 Patna 239 : (1977) 10 PLJR 487

Hon'ble Judges : S. Sarwar Ali, J;G.M. Misra, J

Bench : Division Bench

Advocate : Yogendra Mishra, B.C. Ghosh and Govind Chandrayan, for the Appellant; K.N. Singh, Standing Counsel No. 4, Madan Mohan Prasad Singh, Jr. Counsel to Standing Counsel No. 4, Yogendra Mishra, (for No. 7) and Govt. Pleader II (for Nos. 1 to 6), for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ applications have been heard together and are being disposed of by a common judgment. The petitioners pray for the quashing of Annexures 2 to 6, orders passed under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1951 (hereinafter called "the Act"). It may be stated that the present proceeding under the Act, which was started by the Subdivisional Officer, Sitamarhi, being Case No. 1 Bhu. Ha. of 1973-74, was a second proceeding under the provisions of the Act after the recent amendments. The earlier proceeding was initiated in the year 1969-70 being Case No. 1 of 1969-70.

2. In the earlier proceeding, it was held that the family of the petitioner, namely, the petitioner himself, his wife, sons, daughters and daughter-in-law, together did not hold land in excess of the ceiling as then prescribed, the order having been passed on 30-12-1971. After the amended Act lowering the ceiling and introducing the concept of family was enacted, the present proceeding has been

started. Several objections were taken in that proceeding including the objection regarding the maintainability of the second proceeding. There was also objection in relation to the classification of lands. The other dispute between the parties was whether some of the members of the family were major or minor on the appointed day. The learned Member, Board of Revenue, has held that the second proceeding was entertainable in law. He, however, remanded the case for reconsideration of the question of classification as also re-determination of the question of majority or minority of some of the petitioners in the light of the observations made in his judgment.

3. Learned counsel for the petitioners raised two contentions in this court. He contended firstly that the decision in case No. 1 of 1969-70 was a bar to the initiation of the present proceeding. He next contended that the remand order in so far as the determination of the question of age is concerned was erroneous in law, as it amounted to permitting the State to adduce evidence, which it had not adduced earlier. This could not be done.

4. It was first suggested during the course of argument that the earlier decision was *res judicata*, but later when we pointed out that this point was not available to the petitioners in view of our decision in *Rajni Ranjan Sinha v. State of Bihar* (C.W.J.C. No. 1041 of 1974 decided on 14-12-1976 (Pat)) the learned counsel put his case on a different footing. He contended that in view of the decision of the Supreme Court in *Gurjit Singh and Others Vs. State of Punjab and Others*, , the second proceeding was not entertainable in law. He contended that the second proceeding amounted to review of the earlier proceeding and that concluded matter could not be re-opened. In our view, it is not possible to accept the contention of the petitioners. It would be necessary to briefly indicate the facts of *Gurjit Singh's* case and the actual decision in that case. In the aforesaid case, on the basis of a judgment and decree passed by the civil court to the effect that there was no transfer of land to the first appellant in that case, the Collector under the provisions of the Pepsu Tenancy and Agricultural Lands Act held that there was no surplus land in the ownership and the possession of the first appellant. This order was passed on 28-3-1961. The Act was amended by Act 16 of 1962 and Section 32DD was introduced into the Act with retrospective effect from 30-10-1956. The relevant portion of the section is as follows:

"32DD. Further tenancies in surplus area and certain judgments etc. to be ignored -- Notwithstanding anything contained in this Act. for the purpose of determining the surplus area of any person-

(a) xx xx xx

(b) any judgment, decree or order of a court or other authority, obtained after the commencement of that Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

After the enactment aforesaid, the Collector on the basis of Section 32DD reviewed the order and holding that the decree passed by the civil court had to

be ignored, came to the conclusion that the first appellant held surplus land. It was in these circumstances that the scope of Section 32DD and the legality and validity of the action taken by the Collector came to be considered. The Supreme Court came to the conclusion that the order of the Collector that was passed on 28-3- 1961 was on the basis of the law as existing on the date of the order. The said order was legal and valid when it was passed, the effect of Section 32DD was not to render it null and void. It also came to the conclusion that when a valid order was passed, there was no provision in the amending Act which enabled the Collector to review his previous order.

5. The decision aforesaid in our view is of no help to the petitioners. Here the second proceeding does not purport to reopen the decision arrived at in the earlier proceeding on the basis of the amendment. It also does not attempt to review that order. The order was a good and valid order when it was passed. The ceiling was then different. It was on individual basis. In case of undivided Hindu Joint family, the idea of notional partition had to be introduced for determining as to the area of land held by each member of the family. It is to be observed that in those circumstances it was found that the members of the family did not hold surplus land in accordance with law which the authorities had to apply at that stage. By Act 1 of 1963 as amended by Act 9 of 1973, the ceiling has been lowered. Now, there is no question of notional partition. Moreover, it is not each individual member of the family who is taken as a separate unit for determination of the ceiling area held under the Act. On the other hand, "landholder" has been defined as family and family in its turn has been defined to include a person, his or her spouse and the minor children. After the amendments that had been introduced by the Acts aforesaid, it was open to the authorities to start a fresh proceeding and to find out whether the landholders held land in excess of the ceiling area as prescribed in the amending Act. The determination under the Act before the amendment, could not be a bar to the maintainability of the second proceeding. This has been held by a Bench of this Court in Mahabir Prasad and Others Vs. The State of Bihar and Others, . In our view, therefore. Gurdit Singh and Others Vs. State of Punjab and Others, is not applicable to the facts and circumstances of this case and the authorities did not commit any error of law or jurisdiction in initiating the proceeding in the instant case.

6. So far as the second contention is concerned that too cannot be accepted. The petitioner had produced the medical certificate for the first time before the Board, the same not having been produced before the Subdivisional Officer or the Collector. In those circumstances, it appears to us that the Board was granting indulgence to the petitioner in permitting this evidence to be taken in after remand. It was very well open to the Board not to entertain this material and dispose of the whole matter on the materials on the record excluding the medical certificate. The Board, however, rightly, in view of the medical certificate remanded the case. When a remand was made, there was nothing wrong in permitting both the sides to produce materials in support of their respective

cases. Learned counsel for the petitioner commented on the direction of the Collector that the matriculation certificate should be produced. We do not think that the direction aforesaid can be said to be illegal or unjustified. It, however, must be clarified that the matriculation certificate is not conclusive in relation to the age as held by the Supreme Court in Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, . It is only one of the pieces of evidence. It is possible for a party to say that the age given in the matriculation certificate is not correct and establish, by acceptable evidence, that the age is different from what has been stated in the matriculation certificate.

7. In the result, but subject to the observations made above, these applications are dismissed. In the circumstances, there will be no order as to costs.