(1999) 03 PAT CK 0057

In the Patna High Court

Case No : C.W.J.C. No. 9236 of 1998

Smt. Bansraji Devi and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 18, 2, 32A, 4
Hindu Succession Act, 1956 — Section 6, 8

Citation : (2003) 1 PLJR 21

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

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi and Shambhu Sharan Singh, for the Appellant; S.J. Rahman and V.B. Ambastha, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This case arises out of a land Ceiling Case No. 13/75, which was initiated initially against one Hari Shankar Pathak. The Petitioners have challenged the part of the revisional order dated 5th May 97, apart from the original and appellate orders dated 10th December 91 and 30th November 93 respectively.

2. As the case can be disposed of on a short point, it is not necessary to give detail, facts and claim of the Petitioners except the relevant one.

3. In the aforesaid L.C. Case No. 13/75 initiated against Hari Shankar Pathak initially 227.66 areas of lands were shown to be held by the land holder and three units were proposed to be allowed. Altogether, 182.66 acres of land was proposed to be declared surplus. Subsequently, after objection the total land was found to be 361.434 acres and original Court allowed 9-6/10 units to the family. The original land holder preferred L.C. Appeal No. 364/76-77, which was dismissed against which Revision Case No. 404/77 was preferred before the Board of Revenue. The case was remanded to the Collector in the light of observation and ultimately 9 7/10 units were allowed to the family.

The land holder being not satisfied, again moved in Appeal No. 96/78-79, which was allowed and the case was remitted. Ultimately, after amendment of Bihar and Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (for short the Act) and insertion of Section 32A therein, a fresh draft publication was made from the stage of Section 10. In the new draft publication, merely three ceiling units were allowed, one in favour of Hari Shankar Pathak and two in favour of two of his sons. No separate units were allowed to the brothers of Hari Shankar Pathak and members of their family. In the said case, while enquiry u/s 5(i)(iii) was started, during the pendency of the case, land holder Hari Shankar Pathak died. The widow, the 1st Petitioner Smt. Bansraji Devi was substituted in his place. The objection, as was raised by the Petitioners, was rejected and family was allowed 3 5/10 units vide order dated, 10th December 91. The Appeal No. 89/93-94 preferred by Petitioners was also dismissed on 30th November 93. Thereafter, 1st Petitioner moved in Revision Case No. 268/93 before the Board of Revenue. Therein 2nd to 11th Petitioners intervened and claimed for separate units in their favour on the ground that the land belonged to joint family. After hearing the aforesaid case, the learned Member, Board of Revenue passed impugned order on 5th May 97, v/hereby and whereunder he remitted the case with the following observations and directions:

I find that the learned Courts below have ignored altogether the existence of members of the branches of Late Bishwanath Pathak and Late Kapil Deo Pathak although both Bishwanath Pathak and Kapil Deo Pathak were own brothers of Hari Shankar Pathak. On the point of jointness of the family, as on 9.9.1970, the appointed date, it has to be ascertained at the local level. If the jointness Is not established on the appointed date, the lands recorded in the names of late Bishwanath Pathak and Late Kapil Deo Pathak and members of their respective branches have to be excluded from the lands recorded in the names of family members of Late Harishankar Pathak (husband of the present Petitioner Bansraji Devi) as on 9.9.1970 and for each of the 3 branches, surpluses of lands have to be ascertained separately.

On the other hand if jointness of the 3 branched emanating from Late Janak Ram Pathak is established as 9.9.1970, the ''majority'' of different male members who are being contested could be established by subjecting them to examination, at their cost, by a Medical Board being constituted as follows:

1. Civil Surgeon-Cum-CMO, West Champaran, Bettiah - Chairman.

2. Radiologist S.K.M. College, Muzaffarpur - Member.

3. Anatomist S.K.M. College, Muzaffarpur - Member.

4. Forensic Science Expert S.K.M. College, Muzaffarpur - Member.

5. Representative of Principal, S.K.M. College, Muzaffarpur - Member.

This Board shall hold ossification and other related tests on the campus of S.K.M. College, Muzaffarpur. The cost shall be borne by those claiming to be major as on

9.9.1970 whether in the joint family, as claimed, in the 3 branches if jointness is not established.

4. Counsel for the Petitioners mainly raised two questions. According to him the Petitioners are not supposed to establish the jointness of the family, except to show that the land belonged to joint family. It was further stated that number of members who were alive on 9th September 70 including Hari Shankar Pathak, some of his brothers having died during the pendency of the aforesaid cases, there cannot be any ossification test in respect of such members of the family. Others who inherited the property of (sic-on ?) death of such land holder, which took place after 9.9.1970, their majority cannot be determined, taking into consideration 9th September 70 as the cut off date. It was submitted that the direction on remand to that effect is illegal.

5. The question relating to determination of ceiling area fell for consideration before Courts and ultimately settled by the Supreme Court in the case of K.M. Zuberi and Ors. 1996 (2) P.L.J.R. 55 (S.C.).

This apart, the question relating to inheritance of property and determination of share in a ceiling proceeding of land stands decided by this Court in the case of Dwarika Singh (1977 B.B.C.J. 696); Pramod Prasad Singh [1998(2) P.L.J.R. 689] and the case of Uma Shankar Prasad Sinha and Others Vs. The State of Bihar and Others, .

This Court in the case of Uma Shankar Prasad Sinha (supra) taking into consideration the aforesaid decision of Supreme Court and this Court, held as follows:

From the aforesaid decision read with Sections 2(ee), 2(g), 2(k) and Section 4 of the Act, it can be safely stated that (a) under the Act, the ceiling area is to be determined of a (ceiling) "family" as defined u/s 2(ee) and not of a family "as understood under personal Law" (b) the landholder of whose "families" ceiling is to be determined may either a parson, his or her spouse and minor chiIdren. There may be two land-holders within one (ceiling) "family" but as (celling) "family" of the landholder is entitled for unit, no separate unit can be granted to different landholders of same (ceiling) "family" (c) a major child whether belonging to Hindu family or a Mohemeddan or Christian is not conceived of getting an additional unit while determining the ceiling area of a landholder (ceiling) "family" (d) a major child can get an independent ceiling determined for his/her (ceiling) "family" provided he/she is a separate "raiyat" within the meaning of Section 2(k) and has become a "landholder" within the ambit of Section 2(g) and (e) a major child cannot claim as a successor of the landholder on the ground that he/she has a right in the property by virtue of birth.

So far as grant of share to a heir in a ceiling proceeding is concerned, the question stands decided in Dwarika Singh''s case (1977 B.B.C.J. 696). In the said case, this Court held that in view of provisions of Hindu Succession Act, on the death of landholder, his/her interest in the property would also devolve on heirs including daughter in accordance with the provisions of Section 6 read with Section 8 of the Hindu Seccession Act. Similar view was taken by a Division Bench decision of this Court in Pramod Prasad Singh Vs. The State of Bihar and Others, . Thereby, it can be safely stated that on the death of landholder, the interest in property would devolve on the heirs, who can ask for share even in a land ceiling proceeding.

6. In view of aforesaid pronouncements, no further clarification is required, as on remand the Collector under the Act is required to determine the question of grant of unit and share in accordance with law and decisions of Court, as referred above.

7. Now the question arises relating to grant of unit to the family of landholder who was not so entitled as on 9.9.1970, but inherited the property after 9.9.1970 on the death of one or other landholder.

In this respect, provision has already been laid down u/s 18 of the Act wherein restrictions on future acquisition by inheritance, bequest, gift or on alluvial action has been laid down. In terms with the said provision (Section 18), if after commencement of the Act, any person by himself or through any other person, acquires by inheritance, bequest, gift or on alluvial action, any land which together with the land, if any, exceeds in the aggregate the ceiling area, such person is required to submit return and the Collector under the Act is required to determine the question of retention of land by such person within ceiling area and the land which such person is not entitled to retain and is liable to be acquired being surplus.

For the purpose of determination of such ceiling area the Collector is required to determine the unit, which can be determined taking into consideration the cut off date on which such person acquired the land by inheritance, bequest, gift or on alluvial action.

8. In a case where the landholder who was entitled for separate unit for his family so alive on 9.9.1970 but died after the said cut off date (9.9.1970) the property will devolve on the heirs in accordance with the provisions of personal Law. In such a case, while one or other heir can claim share, in a given case, the authorities are also required to determine the question of unit and existence of surplus land u/s 18 of the Act. For determination of the question as to whether such person is major or not for being entitled for separate unit for his family, the cut off date will be the date of inheritance, bequest, gift or on alluvial action, as the case may be.

9. Accordingly, while I do not choose to interfere with the impugned revisional order dated 5th May, 97, so far as the question of remand is concerned, make it clear that on such remand, the majority of one or other landholder is to be determined on the basis of claim as being made by one or other landholder. If one or other landholder claims to be a raiyat landholder of his own right, as on 9.9.1970, then the majority of such landholder is to be determined on the basis

of such cut off date of 9.9.1970. On the other hand, if one or other person claims to be raiyat landholder by inheritance after death of any original raiyat landholder died after 9.9.1970 then, in such case, the majority of such claimant is to be determined on the basis of date of death of original landholder whose land devolved on the heir on his death.

Similarly, if one or other person is found to be raiyat on such inheritance, after death of original landholder, but is not found to be major on the cut off date, then the land to the extent of his share is to be clubbed together with the land of his parents, treating the person as minor member of the family of his parents.

10. For the reasons aforesaid, I further hold that there shall be no question of ossification test for determination of age of any raiyat landholder, who died prior to such test to be made by the Medical Board.

11. The impugned revisional order dated 5th May, 1997 passed in Case No. 268/93 is modified to the aforesaid effect.

12. The writ petition stands disposed of with the aforesaid observations.