

(1999) 05 PAT CK 0002
In the Patna High Court
Case No : Civil Review No. 120 of 1999

Smt. Bansraji Devi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 18-05-1999

Acts Referred:

Citation : (2003) 1 PLJR 25

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

Bench : Single Bench

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

Judgement

S.J. Mukhopadhaya, J.—The connected writ petition C.W.J.C. No. 5236/98 was disposed of by this Court on 12.3.1999 with certain observation. The revisional order therein remanding the matter was not interfered with but certain clarifications were made relating to determination of majority of one or other landholder. At para-9 to the said application, this Court held and observed-as follows:

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 lone 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 an 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.

2. While the present petition for review has been preferred by writ Petitioners, at the time of argument, their counsel submitted that more clarification of aforesaid judgment, particularly para-9 aforesaid is required. It was submitted that one of the claims raised by the Petitioners was with respect to admission of certain units by the State of Bihar, in respect of landholders, who were found to be above 18 years of age on the cut off date i.e. 9.9.1970 and report to that effect was submitted in the year 1976. There was no dispute of age in respect of one or other landholder. Though the matter was remitted for subjecting landholders for determination of majority by Medical Board, there was no occasion for determination of such majority by a Medical Board of one or other landholder in respect of whom there was no dispute, having shown major in one or other report.

3. Counsel for the Petitioners submitted that the aforesaid question raised has not been determined while judgment in question was passed, nor any classification was made in this respect while specific observation was made relating to determination of majority at para-9 of the judgment in question.

4. Counsel for the State while accepted that the aforesaid question was raised, submitted that a number of persons, who are members of one or other branch of the family, their jointness were claimed. As no decision was given by the subordinate authority relating to jointness of three branches emanating from Late Janak Ram Pathak, the matter was remitted to determine the aforesaid question of jointness as on the date of appointment and then to determine the question of majority of one or other members by a Medical Board.

5. After hearing the parties, I feel that the question raised required to be answered, having no specific observation/decision given in this aspect while judgment in question was passed on 12.3.1999 in C.W.J.C. No. 9236/98.

The question relating to determination of ceiling area, inheritance of property and determination of share in a ceiling proceeding already stand decided as observed and mentioned at para-5 to 8 to the aforesaid judgment. The question relating to determination of majority of one or other landholder has also been dealt with at para-9 of the judgment. However, nothing has been stated in respect of one or other landholder whose majority was never in dispute and was found to be major as on 9.9.1970.

In this context, I may mention that the Collector of the Act is supposed to determine the majority of one or other landholder; allotment of unit and surplus land taking into consideration the report as may be submitted by the lower authority like Circle Officer. If there is any ambiguity in such report, the Collector may ask the Circle Officer to submit a fresh/further report. Once such report on enquiry is accepted by the Collector under the Act for determination of ceiling

area, a person is to be treated as major on the basis of age shown in the report, as on 9.9.1970 and the classification of land as shown therein. If one or other landholder and/or the authority dispute any part of the report relating to majority and/or classification of land, it is for such person, who raises such dispute to lead evidence in contrary to show that the report of Circle Officer to that effect is wrong. Otherwise in absence of such evidence, the report is to be accepted by both the parties including the State.

For example, if landholder "X" is shown minor as on 9.9.1970 and landholder challenges the veracity of the same, it is for the landholder to lead evidence to show the report to that extent is wrong. Similarly, if landholder "Y" is reported to be major as on 9.9.1970 and if the authority/State dispute the same then it is for the authority concerned/State to lead evidence contrary to such report in its support.

6. In view of aforesaid position of law, it can be; safely stated that the question of determination of majority by a Medical Board, in the present case will be limited to the persons (landholders) whose names were not shown in the report submitted by the Circle Officer and/or in respect of whom dispute raised either by landholder or by the State authority. There requires to be no determination of majority by a Medical Board in respect of such landholder who was shown to be major in the report and in respect of whom no dispute was raised.

Similarly, one or other landholder, who died during the pendency of the case, after 9.9.1970 the question of determination of their majority by a Medical Board does not arise. However, any one or other heir, who Inherited property on such death, after 9.9.1970 but was minor, majority of such landholder, on inheritance, may be determined by the Medical Board taking into consideration the date of death of original landholder as cut off date.

7. In view of aforesaid position of law and clarification made above, no further order is required to be passed in this case.

The order and judgment dated 12.3.1999 passed in C.W.J.C. No. 9236/98 stands modified/clarified to that extent.