
(2008) 01 PAT CK 0157
In the Patna High Court
Case No : CWJC No. 9853 of 2004

Smt. Kusum Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 45B
Evidence Act, 1872 — Section 114

Citation : (2008) 56 BLJR 863

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioners and the learned Counsel for the State.

2. The petitioners are aggrieved by the orders dated 9.5.1998 and 9.6.1998 passed in Ceiling Case No. 15 of 1974-75/1 of 1995-96 as affirmed by the Collector, Arwal in Ceiling Appeal Case No. 9/D.M./2002-2003.

3. Land Ceiling Case No. 94 of 1964-65 was instituted against the original landholder Govind Prasad Singh who died during pendency of the same and was substituted by his legal heirs. On 23.12.1970 the land ceiling case was dropped finding that the landholder had no excess lands. In 1973 the proceedings were reopened and a fresh Land Ceiling Case No. 15/74-75/448/73-74 was instituted which was again dropped on 31.10.1974 holding that the landholder was entitled to three units; one for himself and one each for his son, petitioners 2 and 3. The landholder having been deceased was substituted by his wife, who is petitioner No. 1.

4. For the purpose of the present controversy suffice it to say that the land ceiling proceeding was dropped on 31.10.1974 granting three units, was

reopened u/s 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus) Land Act. The ground on which the proceedings were reopened was that the petitioner No. 3 Rajiv Ranjan Prasad Singh was not a major as on 9.9.1970 and therefore was not entitled for one aforesaid date. The petitioners questioned the same in CWJC No. 10497 of 1993. This Court by its order dated 26.6.1995 directed the age of the petitioner No. 3 to be reassessed by ossification test. The fresh report by the ossification test dated 4.7.1996 confirmed him to be a major aged 19 years as on 9.9.1970.

5. Learned Counsel for the petitioners assailed the order dated 9.5.1998 to submit that no valid reason has been assigned to reject the age report of the petitioner No. 3 given by the Medical Board dated 4.7.1996. The report has not even been challenged. It was next submitted that earlier the petitioner No. 2 had been granted one unit by order dated 31.10.1974 holding that he was a major as on 9.9.1970. Without any further discussion for the reasons as to why petitioner No. 2 was not entitled to retain the benefit of the order dated 31.10.1974, in the garb of reopening of the proceeding u/s 45B of the Act, even that has been taken away and now the landholder has been held to be entitled to one unit only.

6. Learned Counsel for the State submitted that in view of the two medical reports available with regard to the age of petitioner No. 3, there was no error in the authorities placing reliance on the earlier report. Learned Counsel however fairly conceded that there was no discussion of any material with regard to deprivation of the unit granted to petitioner No. 2 earlier though it was his case in that in a reopened proceeding entire matter could have been gone into.

7. The Court on consideration of the submissions made on behalf of the parties finds it difficult to uphold the order dated 9.5.1998 as affirmed by the appellate authority. From the impugned order this Court is satisfied that no valid reasons have been assigned to reject the subsequent report of the Medical not challenge its correctness. The report having been submitted by a Medical Board consisting of government doctors raises a presumption of its correctness u/s 114(e) of the Indian Evidence Act. It was for the respondents to rebutt the same by evidence to the contrary. That is not the case presently. The respondents cannot be permitted to place reliance on the previous report by ignoring the subsequent scientific report. To that extent this Court finds it difficult to uphold the impugned order which denied one unit to petitioner No. 3 holding that he was not a major on 9.9.1970. This finding being contrary to the report of the Medical Board is accordingly set aside.

8. In the facts of the present case, the proceedings were reopened u/s 45B of the Act. There is absolutely no discussion in the impugned orders for the reasons as to why the earlier one unit granted to petitioner No. 2 by order dated 31.10.1974 was not admissible any more. In absence of any reason for the same this Court finds it difficult to uphold the impugned order to the extent that it grants one unit to the landholder depriving the petitioners 2 the unit granted to him by order dated 31.10.1974. The deprivation of the unit granted to petitioner

No. 2, without any reasonable consideration or reasoning assigned for the same, is arbitrary and fit to be quashed. It is ordered accordingly. In the circumstances, the impugned orders are not sustainable and are accordingly set aside. The petitioners shall be entitled to three units as granted to them by order dated 31.10.1974.

9. The writ application is allowed.