

(1997) 04 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 9779 of 1996

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

Date of Decision : 28-04-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 11(1), 5, 5(5)

Citation : (1997) 2 PLJR 516

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

Bench : Single Bench

Advocate : Shreenath Singh, Pushkar Narain Shahi, Partha Sarthy, Ashutosh Singh and Dhirendar Kumar Munna, for the Appellant; Lalit Kishore and Ashish Anshu for Respondent No. 6 and Birendra Pd. Verma and Arbind Kumar Singh for Respondent Nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by the landholder along with Ors. against the order dated 6th October, 1993, passed in Ceiling Appeal No. 277/92, as contained in Annexure-5. By the impugned appellate order, the appeal petition which was preferred by the Respondents-State of Bihar has been allowed and the order dated 13th December, 1991, passed by Subdivisional Officer, Sadar, Patna in Land Ceiling Case No. 106/73-74 has been set aside. The revisional order dated 26th December, 1995 passed by the Addl. Member, Board of Revenue in Ceiling Revision Case No. 235/93 is also under challenge, the authorities having affirmed the appellate order.

2. The brief facts of the case are as follows:

A land ceiling proceeding being L.C. Case No. 106/73-74 was started against the original land holder, late Upendra. Narain Choudhary. The Petitioner No. 1, Most. Rajeshwari Devi is the wife of late Upendra Narain Choudhary, the landholder. Petitioner Nos. 2 and 3, namely, Amlendra Narain Choudhary and Dr. Bimlendra

Narain Choudhary, are the two sons of land-holder, late Upendra Narain Choudhary. Petitioner No. 4. Samir Kumar is the grandson, whereas Petitioner No. 5, Smt. Asha Rani Devi and Petitioner No. 6, Smt. Sheela Rani Devi, are two married daughters of land-holder, late Upendra Narain Choudhary.

In the land ceiling proceeding, draft statement u/s 10(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short the Act) was prepared, showing 439.13 acres of land of land-holder, late Upendra Narain Choudhary. Said Upendra Narain Choudhary then filed return, when statement u/s 10(2) of the Act was prepared on 31.5.1983/1-6-1983. In the said statement u/s 10(2) of the Act, 439.11 acres of lands were shown to be the lands held by the land-holder, out of which 123.25 acres of lands were shown to have been voluntarily surrendered by the land holder. The family of the land holder were shown to be entitled for three units i.e. 75 acres of Class-III lands and 240.89 acres of lands were shown to be surplus lands. In fact, in the meantime, land holder-Upendra Narain Choudhary died on 7th May, 1978 and the heirs were substituted. Three units were granted to the family of the land holder i.e. one in favour of widow, Most. Rajeshwari Devi, the second unit to the son Dr. Bimlendra Narain Choudhary and the third unit to the second son Amlendra Narain Choudhary. No unit was, however, granted in favour of grandson, Samir Kumar.

The Petitioners filed objection u/s 10(3) of the Act. In the said objection petition, they raised a number of questions on the basis of certain facts, including the following objections:

(a) In the verification report of the Circle Officer dated 10th July, 1976, the Petitioner, Samir Kumar, grandson, was shown to be major (26 years) as on 10th July, 1976, so one unit should have been allotted in his favour;

(b) Certain lands (73 acres) were gifted by two gifts dated 18th April, 1963 in favour of two daughters, namely, Smt. Asha Rani Devi and Smt. Sheela Rani Devi in terms with the then Section 5(5) of the Act and thereby those lands should not have been included in the lands of the land holder nor could have been declared as surplus; and

(c) Certain lands, which were transferred to Smt. Asha Rani Devi (Respondent No. 6 herein), should have been excluded from the land of the land holder.

On contest, the Court of S.D.O., Sadar, Purnea passed order on 16th September, 1983 (Annexure-1/D). By the said order, four units were allotted in favour of Petitioners i.e. one unit for the widow, two units for the two sons and one unit for the grandson. However, certain other reliefs were not allowed in favour of the Petitioners. Final publication u/s 11(1) of the Act was, accordingly, issued on 13th October, 1988.

The Petitioners as well as Respondents-State of Bihar both preferred appeal. The appeal preferred by the Petitioners was numbered as Appeal No. 336 88-89/77

89-90, whereas the other appeal preferred by the Respondents-State was numbered as Appeal No. 376 88-89/78 89-90. Both the aforesaid appeals were heard and disposed by common order dated 9th July, 1990 (Annexure-3). The appellate authority remitted the matter for redetermination of two questions, namely, (a) the claim of purchaser relating to transfer of lands and (b) claim of daughters relating to two gifts which were made in their favour. The rest of the orders passed by the S.D.O., Sadar, Purnea were affirmed.

The S.D.O., Sadar on such remand. redecided the aforesaid two issues by order dated 13th November, 1991 (Annexure-4). Both the aforesaid issues were decided in favour of the Petitioners. The lands gifted to the two daughters were ordered to be deleted and the lands which were transferred in the name of Smt. Asha Rani Devi (Respondent No. 6) were also ordered to be deleted.

Against said order dated 13th November 1991, passed in Ceiling Case No. 106/73-74, the Respondents-State pref(sic) appeal, being Ceiling Appeal No. 277/1992. After hearing the parties, the Respondent Addl. Collector, Land Ceiling, Purnea allowed the appeal in favour of the Respondents-State by impugned order dated 6th October, 1993 (Annexure-5). The appellate authority this time only allowed two units in favour of the Petitioners, namely, one in favour of window Most. Rajeshwari Devi and the other in favour of the second son, Amlendra Narain Choudhary. The units which were earlier allowed in favour of the other sons, Dr. Bimlendra Narain Choudhary and grandson, Samir Kumar, were disallowed by the appellate authority on the ground that they are foreign nationals. The lands which were gifted in favour of the two. daughters, namely, Asha Rani Devi and Sheela Rani Devi and transferred to Respondent, Asha Rani Devi, were ordered to be treated as the lands of the land holder, late Upendra Narain Choudhary and were counted for declaration as surplus lands.

The Petitioners thereafter preferred revision application before the Board of Revenue, which was registered as Case No. 235/93. The learned Addl. Member, Board of Revenue by impugned Resolution dated 26th December, 1995 (Annexure-6), rejected the revision application.

3. The counsel for the Petitioners submitted that after the original order passed by S.D.O., Sadar dated 16th Sept., 83, when Ceiling Appeal Nos. 336/88-89 and 376/88-89 were preferred by the Petitioners, the appellate authority by order dated 9th July, 1990 (Annexure-3), affirmed the decision relating to grant of units. The appellate authority remitted the matter to decide only two issues relating to gifted lands and transferred lands. It is submitted that when the original authority decided only the aforesaid two issues relating to transferred lands and gifted lands, by order dated 13th November, 1991, on appeal preferred by the Respondents-State being Ceiling Appeal No. 277/92, the matter relating to units would not have been looked into and there was no justification to set aside the earlier order granting two units in favour of the first son, Dr. Bimlendra Narain Choudhary and grandson, Samir Kumar. It was further stated that, in fact, no challenge was made by the Respondents State against the earlier order of the

appellate authority dated 9th July, 1990 (Annexure-3), so far the same relates to grant of units in favour of the Petitioners. It was also pointed out that vide Ceiling Appeal No. 277/92 preferred by the State, no challenge was made with respect to grant of four units, but the challenge was made against the order dated 13th November, 1991, which relates to two issues i.e. transferred lands and gifted lands.

4. The counsel for the Petitioners further stated that the matter was to be looked into on the basis of position as was existing on 9th September, 1970, the Petitioner No. 3, Dr. Bimlendra Narain Choudhary and Petitioner No. 4, Samir Kumar, were Indian citizens even on that date and they continued to remain Indian citizens upto 1996. It was submitted that the Petitioner Nos. 3 and 4, being Indian residents as on 6th October, 1993, the appellate authority erred in holding that they acquired citizenship of foreign country. The counsel for the Petitioners also relied on the Circular No. 3 dated 20th January, 1992 of the State of Bihar, as contained in Annexure-7, by which while giving instruction relating to acquisition, holding etc. of immovable properties in India, certain benefit has been given to foreign citizens of Indian origins (Non-Resident Indians) and submitted that the Petitioners were at least entitled for (sic) benefit, which was not considered by the appellate authority.

5. The counsel for the Petitioners while relied on verification report, as contained in Annexure-1, particularly, page 57 of the writ petition, submitted that Circle Officer having declared the Petitioner- Samir Kumar, as major as on 9th September, 1970, there was no occasion for the appellate authority to debar the said Petitioner from unit and it was not for the Petitioners to show that said Samir Kumar was major, the verification report being already in their favour.

6. So far as gifted land is concerned, it was pointed out that the gift was made in terms with Section 5(5) of the Act, within the grace period of one year, the Gazette notification having issued on 19th April, 1962 and gifts having been made on 18th April, 1963, thereby the decisions of appellate authority and the revisional authority to that effect were also challenged by the counsel for the Petitioners. However, with respect to transferred lands, the counsel for the Petitioners did not choose to press the writ petition.

7. The counsel for the Respondents-State mainly relied on a decision of the Supreme Court in the case of State of Bihar v. Sri K.M. Zuberi and Ors. reported in 1996 (2) PLJR 55 (S.C). According to him, in terms with the said decision, the sons are not entitled for a single unit, when the father was the land holder. He also placed reliance on a Full Bench decision of this Court in the case of Imamul Hassan Choudhary Vs. State of Bihar and Others, , which decision was the subject matter before the Supreme Court. It was also submitted that in the light of the aforesaid decision of the Supreme Court, both the Petitioner Nos. 3 and 4 are not entitled for additional units.

8. With respect to the other point relating to gifted lands, no specific objection

was raised by the counsel for the Respondents-State. However, with respect to transferred lands, it was submitted that the question having not been pressed by the Petitioners, this Court should not interfere with respect to such transferred lands.

9. It is to be taken into note that Mr. Lalit Kishore, who appeared on behalf of Respondent No. 6, Sheela Rani Devi, challenged the validity of decision of appellate authority, so far as the transferred land concerned and also tried to impress the Court that the claim of Respondent No. 6 is genuine, based on a decree passed in a title suit.

10. On the basis of the pleadings made by the parties, the following questions arise for consideration:

(A) Whether the appellate authority, in deciding Ceiling Appeal No. 277/92 had jurisdiction to reopen the matter relating to grant of units in favour of land holder;

(B) If the appellate authority had such a jurisdiction, how many units to which the family of the land holder was entitled;

(C) Whether the Petitioner Nos. 3 and 4, who became foreign nationals are entitled to any unit; and

(D) Whether gifted land (gifted on 18th April, 1963) should have been deleted from the land of land holder or not.

11. Admittedly, the issue relating to grant of units was initially decided by the authority u/s 10(3) of the Act by order dated 16th September, 1983. By the said order, the family of the land holder was provided with four units. Both the Petitioners as well as the Respondents-State preferred appeals thereafter being Ceiling Appeal Nos. 336/88-89 and 376/88-89. The appellate authority by its order dated 9th July, 1990 affirmed the decision relating to grant of units. It remitted the matter to the original authority to decide only two issues relating to gifted lands and transferred lands. Subsequently, no revision application having preferred against the common order of appellate authority dated 9th July, 1990, the said order became final.

So far as grant of units are concerned, in this context, I may refer the decision of the Supreme Court in the case of Ujagar Singh Vs. State of Punjab, . In that case, the order determining surplus land under the Act was allowed to become final in absence of any challenge by filing appeal. However, in subsequent consolidation proceeding, the land holder found to be having less extent of land than the prescribed standard acres under the Act, the matter was ordered to be reopened for redetermination by the order of the High Court. The Supreme Court held that the order determining surplus land having been allowed to become final, it will not be open to the land holder or anybody to claim redetermination.

12. Following the aforesaid principles laid down by the Supreme Court in the case

of Ujagar Singh (supra), I hold that the order passed by the S.D.O., Sadar, Purnea on 16th September, 1983 became final after the common appellate order dated 9th July, 1990. passed in Appeal Nos. 336/88-89 and 376/88-89, so far as it relates to grant of units in favour of family of the land holder.

13. In the result, I hold that the subsequent Ceiling Appeal No. 277/92 was not maintainable with respect to grant of units in favour of family of land holder and the appellate authority had no jurisdiction to pass any order in the said subsequent Ceiling Appeal No 277/92 with respect to such grant of units. The question No. A thus stands decided in favour of the Petitioners.

14. So far as Question Nos. B and C are concerned, according to me, it requires no answer in the present case, as the question relating to grant of units stood final and was not the question to be determined in the subsequent Appeal No. 277/92.

Accordingly, no finding is given with respect to Question Nos. "B" and "C" aforesaid.

15. So far as Question No. "D" which relates to gifted land is concerned, before deciding the said question, it is necessary to look into the provisions of Section 5(5) of the Act, as was existing at that point of time, which reads as follows:

5. No person to hold land in excess of the ceiling.- Any land holder, subject to the provisions of the tenancy law of the area may, if he has not already transferred, transfer, till the commencement of this Act and within (one year) thereafter, by way of gift any land held by him as raiyat to his son daughter, children of his son or daughter, or to such other person or persons who would have inherited such land or would have been entitled to a share therein had the land-holder died intestate in respect thereof at midnight between the date of the commencement of this Act and the day just preceding such date so as not to exceed, together with any other land held by the donee, the area the donee can hold u/s 5.

16. From plain reading of the aforesaid provision, it is clear that the Legislature intended and granted grace period of one year to the land holder to gift lands in favour of Ors. within the said grace period. By the aforesaid provision, no restriction has been made to the land holder to gift such land within specified limit. The provision of Section 5(5) aforesaid came into effect on 19th April, 1962 and remained in existence till 18th April, 1963 (one year). The gifts, in question, having been made by the land holder within the aforesaid period, on 18th April, 1963 in favour of Petitioner Nos. 5 and 6, it can be safely stated that such gifts were made in accordance with law. The original authority, on remand, by its order dated 13th November, 1991, held that after such gifts, the Petitioner Nos. 5 and 6 acted upon the same and thereby ordered to exclude the gifted lands from the lands of the land holder. There being no contrary material available before the appellate authority at the time of Ceiling Appeal No. 277/92, there was no occasion for the appellate authority to give any other finding on such facts. In this background, I hold that the original authority by its order dated

13th December, 1991 rightly held that the gifted lands be deleted from the lands of the land holder and the impugned appellate order dated 6th October, 1993 and the revisional order dated 26th December, 1995 are wrong to that extent. The Question No. "D" thereby stands decided in favour of the Petitioners.

17. In view of my aforesaid findings, it is not necessary to decide any other question, including the question as to whether Petitioner No. 4 was major as on 9th September, 1970 or not and whether Petitioner Nos. 3 and 4, two foreign nationals, were entitled for separate units or not being citizens of this country at the time of such decision. The Petitioners having also not pressed the question relating to transfer of lands made in favour of Respondent No. 6, I am not inclined to decide such issue at the instance of the Respondent No. 6 who has not preferred any cross-objection to the same.

18. Accordingly, the impugned appellate order dated 6th October, 1993, passed in Ceiling Appeal No. 277/92 and the revisional order dated 26th December, 1995, passed in Ceiling Revision Case No. 235/93, are set aside, so far as it relates to grant of units in favour of family of land holder and gifted lands are concerned.

19. The Respondents are directed to issue appropriate revised Notification allowing four units in favour of family of the land holder in terms with the original order dated 16th September, 1983 with further(sic) action to delete the gifted lands from (sic) and of the land holder while issuing (sic) notification.

20. The writ petition is allowed. with(sic) the aforementioned observations and(sic) directions. There will be no order, as to(sic) costs.