(2010) 10 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10639 of 1996

Smt. Shyama Devi, Subalendra Narayan Choudhary, Devendra Narayan Choudhary, Smt. Lila Devi and Smt. Madhuri Devi — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 18, 2, 5

Citation : (2010) 10 PAT CK 0076

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—A ceiling proceeding was initiated numbered as Land Ceiling Case No. 455 of 1984-85 against late D.N. Choudhary. A draft statement was published on 16.6.1984 indicating that the land holder possessed about 528.381/2 acres of land. It also indicated that the land holder was entitled to retain 51.93 acres whereas the remaining 476 acres of land were declared to be surplus. The Petitioner filed his objection on 16.8.1984 raising several points. However, before this Court, the objection is restricted only to one point which is whether the Petitioner could have gifted his lands to his daughters and grandson?

2. Factual aspect is that on 6.9.1992, the land holder gifted 55.40 acres of land to Lila Devi [substituted heir 1 (c)], whereas he gifted 55.10 acres of land to Madhuri Devi [substituted heir 1(d)]. The land holder also gifted 18.201/2 acres of land to Mukesh Kumar (Son of Lila Devi) on 18.4.1963 who was a minor at the time of the execution of the gift. The land holder also transferred 63.89 acres of land in favour of his wife [substituted heir 1(d)]. The total lands gifted by the land holder were 128.701/2 acres in favour of his daughters and grand son besides the land gifted to his wife. The Additional Collector, Purnea by order dated 26.3.1985 and the Appellate Court by order dated 2.9.1988 allowed the gift in favour of the two daughters and the grandson, however, rejected the deed

of gift in favour of the wife.

3. Sub-Section 5 of Section 5 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ''the 1961 Act'') reads as follows:

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 the 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.

On reading of Section 5, it is clear that a deed of gift could have been executed within one year of the promulgation of the 1961 Act in favour of son, daughter, children or any other person who had a right to inherit the lands of the land holder. Such land gifted or transferred should however, be within the ceiling limits of the lands held by the donee.

4. Section 18 further envisages that the person receiving such gift should within 90 days inform the Collector regarding the fact as to whether the donee has land in excess of the ceiling area.

5. The Member, Board of Revenue has rejected the deed gifts executed by late D.N. Choudhary in favour of his daughters and wife. The ground for rejection is that the lands transferred by way of gift are in excess of the ceiling area. It has also been observed that the husbands of the two daughters i.e. Petitioner Nos. 1(c) and 1(d) are well off persons and own large tracks of lands and as such the deed of gift in their favour is beyond the land which can legitimately be held under the Ceiling Act. It has also been observed that the son of Lila Devi, who was a minor has been gifted 18.201/2 acres of land, as such the lands gifted in favour of Lila Devi exceeds the limits prescribed under the Ceiling Act.

6. Learned Counsel for the Petitioner submits that the findings of the Member, Board of Revenue are not based on any evidence. The Member Board of Revenue should have directed the Collector to conduct an enquiry, issue notice to the donees and the donees ought to have filed their affidavits stating that they have possessed/do not possess lands in excess of the ceiling area. Obvioulsy, this was not done. The order of the Additional Collector or the Appellate Court does not indicate that any such enquiry was made before holding that the lands are in excess of the lands permissible to be held by the donee.

7. I, therefore, quash the order of the Member, Board of Revenue with respect to his finding regarding the deed of gifts in favour of Lila Devi, Madhuri Devi and Mukesh Kumar.

8. This Court, however, is not interfering with the findings of the Member, Board of Revenue on any other issue and the reasons given by the Member, Board of Revenue for rejecting the deed of gift made by D.N. Choudhary in favour of his wife. The lands of the husband and wife are clubbed in one unit, as such it is obvious that the land holder could not have gifted the lands to his wife as per the definition of Section 2(ee) of the Ceiling Act. This matter is remanded back to the Collector, Purnea to record a finding with respect to the lands possessed by Petitioner Nos. 1 (c) and 1(d). Since the donees are appearing in this case, they are directed to co-operate with the Court. Mukesh Kumar who must by now be a major may also be issued notice in the matter, so that he can give adequate statements with respect to the lands possessed by him. The Collector, Purnea is directed to pass an order within six months on receipt of a copy of this order.

9. This writ application is disposed of with the aforesaid terms.

