
(1993) 02 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6473 of 1992

Srimati Tapeshwari Devi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-02-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 10, 11
Hindu Succession Act, 1956 — Section 10

Citation : AIR 1994 Patna 3 : (1993) 41 BLJR 1028

Hon'ble Judges : S.B. Sinha, J; Radha Mohan Prasad, J

Bench : Division Bench

Advocate : Raghib Ahsan and Khurshid Ahmed Siddiqui, for the Appellant; B.P. Verma, S.C. (Revenue), for the Respondent

Final Decision : Allowed

Judgement

1. In this application the petitioners have prayed for issuance of an appropriate writ for quashing the notification, as contained in Annexure 1 to the writ application.

2. The fact of the matter lies in a very narrow compass. Sheo Bachan Bhagat was the original owner of the property. We had gifted 3.12 1/2 and 4.66 acres of land to the petitioners Nos. 4 and 5 respectively vide registered deed of gift dated 7-9-1962 and put them in possession of the said lands. He had also gifted 1.84 acres of land to one Om Prakash Bhagat, son of the petitioner No. 2, vide registered deed of gift dated 7-9-1962, and put him in possession thereof. The names of the said donees were also mutated and they are obtaining rent receipts on payment of rent. The names of the petitioners Nos. 4 and 5 and the aforementioned Om Prakash Bhagat were also mutated in Register II in respect of the gifted lands. Sheo Bachan Bhagat, father of the petitioners and the respondents Nos. 8 and 9, owned and possessed 131.04 acres of land, out of which he had gifted the aforementioned 9.62/2 acres of land to the petitioners

Nos. 4 and 5 and the son of the petitioner No. 2.

3. After about two years of the said gift, Sheo Bachan Bhagat died in the year 1964 leaving behind his widow, Ramabati Devi, two sons, the respondents Nos. 8 and 9, and five daughters, the petitioners, and thus, on the death of Sheo Bachan Bhagat, the petitioners inherited 5/8th share in the properties left by their father and the remaining 3/8th share was inherited by the widow and two sons of Late Sheo Bachan Bhagat. Later on, Ramabati Devi, the mother of the petitioners and the respondents Nos. 8 and 9 and the widow of late Sheo Bachan Bhagat also died in the year 1973 and, on her death, all her sons and the daughters jointly inherited 1/8th share in the property. There has not been any partition of the properties left by Late Sheo Bachan Bhagat amongst his heirs by metes and bounds but, for convenience, the petitioners and the respondents Nos. 8 and 9 have been allotted separate lands out of the lands inherited by them.

4. During consolidation proceedings the petitioners' names have been entered in the register of lands and khatians have also been prepared in their names in respect of portions of the lands which are in their actual physical possession. The petitioners recently in the month of April, 1992 learnt about the impugned notification and, thereafter, they made enquiry and came to know that a land ceiling proceeding being L.C. case No. 67/73-74 was initiated as against Uday Shanker Bhagat and Krishna Shanker Bhagat (the respondents Nos. 8 and 9) respectively), who are the sons of late Sheo Bachan Bhagat, in which the respondents Nos. 4 to 7 included the entire lands held by late Sheo Bachan Bhagat as also the lands gifted to the petitioners Nos. 4 and 5 and the son of the petitioner No. 2 and after allowing 50.00 acres equivalent to two units for each of the respondents Nos. 8 and 9, the two sons of late Sheo Bachan Bhagat, 81.04 acres of land were shown as surplus in the draft statement published u/s 10(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of surplus Land) Act, 1961 (hereinafter referred to as "the Act").

5. No notice to any of the petitioners or the son of the petitioner No. 2 was ever given although they having inherited 5/8th share besides having got 9.62 1/2 acres of land by gift were entitled to notice under Sections 10 and 11 of the Act read with Rules 11 and 12 of the Rules thereof. After the draft publication was made, the respondents Nos. 8 and 9 filed objection pointing out that the petitioners are also cosharers to the extent of 5/8th share but the respondents Nos. 3, 4 and 5 did not even consider it necessary to give any notice to the petitioners before disallowing the objection, inter alia, on the ground that the married daughters are not entitled to any unit and failed to appreciate that in any event they are entitled to their share. Since the petitioners are not on good terms with the respondents Nos. 8 and 9, they did not even inform them about the orders and the proceedings had remained satisfied with the orders passed by the respondents allowing them two units which is much more than their shares. All the petitioners were major on 9-9-1970 and, therefore, they were entitled to

their share in the. lands inherited from their father.

6. Mr. Raghib Ahsan, the learned counsel appearing on behalf of the petitioners has raised a short question in support of this application. The learned counsel submitted that in view of the fact that the owner of the land died in the year 1964, the petitioners became his successor-in-interest along with their two brothers after the death of their widowed mother in the year, 1973.

7. The learned standing counsel submitted that the married daughters being not members of the family of their father, they are not entitled to allotment of separate unit.

8. By reason of the provisions of the Hindu Succession Act, 1956, the daughters of a person dying intestate also inherit along with their brothers in equal shares. Such inheritance of the property is by reason of operation of statute, in terms whereof a valid right, title and interest is created in the properties of the landholder.

9. In order to lay a claim with regard to their shares the petitioners were also not obliged to show that they were in actual physical possession of the properties in question upon getting the same demarcated as per their share. A co-sharer can claim exclusive title to the property not only by merely remaining in possession thereof for a period of 12 years but, in order to acquire indefeasible title in relation thereto, ouster of the other co-sharers has to be pleaded and proved.

10. In this view of the matter, in our opinion, the authorities under the said Act ought to have considered the claim of the petitioners on its own merits.

11. For the reasons aforementioned, the impugned notification, as contained in An-nexure 1 to the writ application cannot be sustained. The Collector under the Act may decide the claim of the petitioners after giving notice to the petitioners and the respondents Nos. 8 and 9.

12. This application is, thus, allowed.