
(2011) 04 PAT CK 0130

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1047 of 1996

Usha Devi, Ramrup Choudhary and Mahesh Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Bihar Tenancy (Amendment) Act, 1993 — Section 23(4)

Bihar Tenancy Rules, 1886 — Rule 4, 5

Constitution of India, 1950 — Article 14, 19(1)

Citation : (2011) 04 PAT CK 0130

Hon'ble Judges : R.M. Doshit, C.J.; Jyoti Saran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Doshit, C.J.—The Petitioners are the owners of the land, Khata No. 44 Khasra No. 45 admeasuring 3 decimals, situated at Dhawni P.S. Rajoun, District-Banka and the other parcels of land described in paragraph 5 of the writ petition.

2. The Petitioners are running an eatery on the aforesaid piece of land admeasuring 3 decimals. Indisputably, the Petitioners have converted agricultural land to commercial use.

3. In Misc. Case No. 4 of 1994-95 initiated by the revenue authorities, a rent was sought to be recovered from the Petitioners for commercial use. It is the said action of the revenue authorities which has triggered the present writ petition.

4. The Petitioners have also challenged the constitutional validity of the Bihar Tenancy (Amendment) Act, 1993.

5. Both the learned advocates agree that the matters at issue have been decided by the Division Bench of this Court Amar Singh and Others etc. etc. Vs. The State of Bihar and Others etc. etc. in favour of the writ Petitioners.

6. In the said judgment the Bench held as under:

42. As a result of the aforesaid discussions it is held as follows:

(i) The impugned provisions are within the legal competence of the State Legislature.

(ii) Although described as rent, the impugned levy is in fact, a tax on land covered by Entry 49 of List II of the 7th Schedule to the Constitution.

(iii) The impugned tax on land is discriminatory because it is imposed only on a class of land owners i.e. raiyats with occupancy rights covered by Chapter V of the Act and not to other class of land holders covered by Chapters III, IV, VI and VII of the Act.

(iv) The denial to the occupancy raiyats the right to use their land in any manner of their choice is arbitrary, unreasonable and against Articles 14 and 19(1)(g) of the Constitution.

(v) The words-"to the extent of 5 per cent" in first proviso to Sub-section (4) of Section 23 of the Act is bad in law on account of excessive delegation and abdication of legislative function by the legislature.

(vi) Rule 4 of the Rules is bad in law for excluding other permissible modes to determine the real market value of the land which is likely to result in unfair and unjust levy of rent/tax.

(vii) The proviso to Rule 5 is ultra vires the first proviso to Section 23(4) of the Act.

7. In view of the aforesaid judgment this petition allowed. The impugned action of realization of commercial re is quashed and set aside and consequent proceeding in Misc Case No. 4 of 1994-95 are quashed and set aside.

The parties will bear their own cost.