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Court : Patna

Decided On : May-05-2000

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. No. 8793 of 1999

Appellant : Haricharan Chamar and ors.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Shri. Ganga Prasad Roy

Disposition : Appeal Dismissed

Prior history : S.N. Jha, J. 1. There are twenty three petitioners in this case. They seek quashing of the order of the Collector, Kaimur at Bhabhua dated 16.8.99 in Miscellaneous (land ceiling) case No. 57 of 1998-99, cancelling the Red Cards relating to the lands of late Ramayan Ojha declared surplus under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'the Ceiling Act'). The relevant facts, briefly stated, are as follows: 2. Land Ceil

Judgement :

S.N. Jha, J.

1. There are twenty three petitioners in this case. They seek quashing of the order of the Collector, Kaimur at Bhabhua dated 16.8.99 in Miscellaneous (land ceiling) case No. 57 of 1998-99, cancelling the Red Cards relating to the lands of late Ramayan Ojha declared surplus under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'the Ceiling Act'). The relevant facts, briefly stated, are as follows:

2. Land Ceiling case No. 5/76/74 of 1973-74/1974-75/1982 was initiated against late Ramayan Ojha for determination of his ceiling area under the Ceiling Act. The land-holder was allowed three units for self and two sons namely, Harihar Ojha and Suryabansh Ojha by the Deputy Collector Land Reforms (DCLR) Bhabhua exercising the powers of the Collector under the Act. The State of Bihar preferred appeal before the Collector, Rohtas challenging the correctness of grant of unit to Suryabansh Ojha. The appeal was allowed and unit to Suryabansh Ojha was deleted. The land-holder preferred revision before the Board of Revenue which was dismissed. He then came to this Court in C.W.J.C. No. 2208 of 1989. During the pendency of the case he died whereafter his three sons, namely, Harihar Ojha, Suryabansh Ojha and Kapilmuni Ojha were substituted and they prosecuted the writ petition. By judgment and order dated 12.11.98, the impugned order of the Collector deleting unit to Suryabansh Ojha was set aside. The matter, however, was remitted back to the Collector to take a decision with respect to the Red Card-holders with whom the surplus lands had been settled in the meantime. On remand, the Collector held that the lands had been settled on the basis that the family of the land-holder was entitled to only two units as per the decisions of the appellate and the revisional authorities but as third unit had been allowed to Suryabansh Ojha, there was no surplus land left which could be settled. He accordingly directed the Sub-divisional Officer to cancel the Red Cards. He, however, observed that as letters patent appeal against the judgment and order in C.W.J.C. No. 2208/89 was pending, in case the appeal is allowed and the High Court decides against the land-holder, the settlement made with them will stand restored. The. Red-Card-holders have come to this Court challenging the correctness of the said order of the Collector.

3. Shri Ganga Prasad Roy, learned Counsel for the petitioners, submitted that the impugned order has been passed under a wrong premise that three units have, been allowed to the land-holder. He contended that the grant of unit to Suryabansh Ojha did not make any material difference because Ramayan Ojha had died during the pendency of the writ petition and therefore, the unit allowed to him did not survive. He submitted that unit cannot be allowed to a dead person and where a person to whom the unit has been allowed dies during the pendency of the proceeding, the lands falling within his unit would devolve upon his heirs in terms of the provisions of Section 18 of the Ceiling Act. In support of the contention, he placed reliance on State of Maharashtra v. Narayan Rao Shyam Rao Deshmukh : [1987]163ITR31(SC) and Krishna Prasad Sharma v. State of Bihar and Ors. 1998 (3) PLJR 179. He also submitted that LPA No. 1336 of 1998 preferred by the Red Card-holders, i.e., the petitioners herein has been admitted by this Court for hearing which means that the petitioners have prima facie case and therefore, during the pendency of the letters patent appeal, the Collector should not have cancelled the settlement.

4. The submission that upon the death of the unit-holder, the unit vanishes is contrary to the provisions of Sections 4 and 5 of the Ceiling Act. Section 4 provides for fixation of ceiling area and Section 5 provides for restriction on holding of land in excess of the ceiling area. They are the charging provisions of the Ceiling Act. It would be useful to quote the two Sections so far as relevant as under:

Section 4. Fixation of ceiling area of land.-On the appointed day, the following shall be the ceiling area of land for one family consisting of not more than five members for the purposes of this Act...

5. No person to hold land in excess of the ceiling area-

(1) (i) It shall not be lawful for any family to hold, except otherwise provided under this Act, land in excess of the ceiling area.

(2) (i)....

(ii) Any land which a land-holder is allowed to hold under this Section shall not be liable to be acquired by the State Government under this Act merely by reason of any subsequent improvement in the land or diminution in the number of persons referred to in Clause (i).

(Emphasis supplied)

It would be also useful to notice the definition of the words 'appointed day' and 'family' occurring in Section 2(a) and (e) of the Ceiling Act as under:

appointed day means the 9th day of September, 1970. 'family' means and includes a person, his or her spouse and minor children.

Explanation I-In this clause, the word person includes any company, institution, trust, association or body of individuals whether incorporated or not;

Explanation II-The personal law shall not be relevant, or be taken into, consideration in determining the composition of the family for the purposes of the Act;

5. From a conjoint reading of the above provisions, it would appear that the ceiling area has to be determined with reference to 9.9.1970. It is on this ground that a person who was minor on 9.9.1970 is not treated as a separate family or land-holder and denied separate unit, and his interest is clubbed with his parents. On the same logic where a person was alive on 9.9.1970 and accordingly allowed a separate unit, the unit so allowed cannot be treated to have vanished on the ground of his subsequent death. Section 18 of the Ceiling Act which is the foundation of the claim of the petitioners contemplates entirely different situation. In order to bring home the point, it would be useful to quote the Section so far as relevant as under:

18. Restriction on future acquisition by inheritance, bequest, gift, or on alluvial action.-(1) If, after the commencement of this Act, any person, either by himself or through any other person acquires by, inheritance, bequest or gift, or by alluvial action, any land which, together with the land, if any, already held by him anywhere in the State, exceeds in the aggregate the ceiling area, then, he shall,

within ninety days of such acquisition by inheritance, bequest or gift, and within six months thereof, by alluvial action, submit to then Collection a return by registered post, with acknowledgment due, giving the particulars specified below and selecting the land he desires to retain:

(i) the area and description of such land;

(ii) the date of the acquisition;

(iii) the manner of the acquisition and the particulars of the documents, if any, under which such acquisition was made;

(iv) name and description of the person who held the land before the acquisition;

(v) total area of land held anywhere in the State by the person in whose favour the acquisition is made; and

(vi) any other particulars which may be prescribed.

(2) If he fails to submit the return and select the land within the period specified in Sub-section (1), the Collector may obtain the necessary information through such agency as he thinks proper.

(3) On receipt of the return prescribed in. Sub-section (1) or collection of information under Sub-section (2) as the case may be, the Collector shall after giving the land-holder a reasonable opportunity of being heard and adducing evidence and after inquiries as i.e considers necessary select, the land which may be retained by the landholder within his ceiling area and also determine the land which is in excess of the ceiling area and which he is not entitled to retain under this Act.

(4) The Collector shall then acquire the surplus land by publishing in the official Gazette a notification to the effect that such land is required for a public purpose and such publication shall be conclusive evidence of the fact stated therein for the purpose of this Act.

6. From a bare reading, it would appear that the Section envisages a situation where by virtue of future acquisition such as by inheritance, bequest, gift or otherwise, the total land held by the land-holder exceeds the ceiling area. In other words, if the person concerned otherwise does not hold land in excess of ceiling area but later comes to acquire lands by inheritance, bequest, etc. by virtue of which his total holding exceeds the ceiling area, he would come within the mischief of the Ceiling Act, and would thus be required to submit a return giving necessary particulars of the lands including lands which he proposes to retain in the manner laid down in the Section. If I may say so, the provisions of Section 18 are logical corollary and have to read as supplemental to the provisions of Sections 4 and 5 of the Act. While under Section 4 read with Section 5, the ceiling area, has to be determined with reference to 9.9.1970, there may be cases where the area held by the person on that day does not exceed the ceiling area but later he comes to acquire lands by inheritance, bequest, etc. increasing his total holding beyond the ceiling area. In the absence of provisions, as contained in Section 18, he might remain out of net of the Ceiling Act which could have left a loophole in its implementation. That is why the provisions of Section IS were enacted.

7. There is nothing in Section 18 to suggest that the unit already allowed to the land-holder, would vanish. I have no doubt in my mind that as the entitlement of the land-holder has to be considered with reference to, state of affairs as existing on the appointed day, i.e., 9.9.1970, the subsequent events cannot wipe out or obliterate the unit already granted. That would not only be contrary to the provisions of Section 5(2)(ii) of the Act but would also be violative of general principles. What is sauce for the goose is also sauce for the gander and therefore, if a person is not entitled to unit even though he attains majority after 9.9.1970, the unit allowed on that day to a person cannot be taken away. If it were so, a time would come where the land-holders' family would be left with no unit, for in course of time, the unit, holders would die one by one and none will be finally left. In that case, Kapilmuni Ojha should be allowed a unit making the number of units three again. The object of the Ceiling Act is to determine ceiling are of the land-holder and acquire surplus land as on 9.9.1970. The Act also provides for settlement of the surplus lands in the prescribed manner, but not escheat to the State.

8. The decision in State of Maharashtra v. Narayan Rao Shyam Rao Deshmukh (supra) was rendered in different set of facts and law. The family in question consisted of the Karta, his son, wife and mother governed by the Mitakshra School of Hindu law. The Karta died after the Hindu Succession Act came into force. His interest devolved on the three members, in equal shares. The members continued to live together enjoying the family property as before. After the Ceiling Act came into force the question of determination of surplus lands arose. It was contended that on the death of the karta, the surviving members of the family ceased to hold the family property as members of the family and therefore, each of them was entitled to one unit. The plea found favour with the High Court but the Supreme Court held otherwise. However, it would appear that the very basis of the entitlement was different in the relevant Ceiling Act. applicable to, the State of Maharashtra. The Act laid down that no person shall hold land in excess of ceiling area as determined in the manner laid down. Section 2(22) of the Act defined 'person' to mean a family. Under Section 2(11) 'family' was defined to include a Hindu undivided family, and under Section 2(20) the term 'member of a family' was defined to mean 'a father, mother, spouse, brother, son, grant-son, or dependent sister or daughter, and in the case of a Hindu undivided family a member thereof, also a divorced and dependent daughter.' In view of these provisions, the Supreme Court held that though a female member who inherits interest in the joint family property under Section 6 of the Hindu Succession Act is entitled to share, she does not cease to be member of the family within the meaning of Sections 2(11) and 2(20), and therefore read with Section 2(22), she would come within the ambit of the term 'person' and would not be entitled to a separate unit.

9. The Decision in Krishna Prasad Sharma v. State of Bihar (supra) instead of lending support to the petitioner's contention rather goes against them. It demolishes the contention based on Section 18. The Court noticed the minority view in State of Bihar v. K.M. Zuberi 1986 PLJR 67 which was approved by the Supreme Court in State of Bihar v. K.M. Zuberi AIR 1996 Supreme Court 1996, in which it had been held that the exclusion of personal law by Explanation-11 (to Section 2(ee), quoted above) is limited to the determination of the composition of the 'family' and its effect on the acquisition. However, the Act does not deal with the law relating to devolution of title. It does not in any way modify the law of

succession applicable to the land-holder, and the question of inheritance is, therefore, to be answered by the law applicable to the deceased landholder. None of the two decisions is, therefore, of any help to the petitioners.

10. Now, adverting to the impugned order of the Collector, once the family becomes entitled to three units by reason of decision of this Court in C.W.J.C. No. 2208 of 1989, the conclusion is irresistible that no surplus land was left which could be settled with any person. Admittedly, the lands in question were settled with the petitioners as 'surplus lands' on the premise that the family was entitled to only two units as held by the appellate authority and upheld by the revisional authority. This Court while allowing the unit to Suryabansh Ojha observed that he had admittedly been shown to be major in the verification report and there was nothing on the record to suggest that he was minor on the appointed day. The Court noted that the finding of the DCLR was set aside by the Collector on the ground that land-holder could not produce the school leaving certificate, but the claim regarding majority having been accepted by the DCLR on the basis of verification report, if the State was not satisfied, onus lay on it to show on the basis of evidence that the finding was incorrect. The onus could not be fastened on the land-holder. Thus, allowing unit to Suryabansh Ojha, this Court directed as under:

The case is remitted to the Collector of the district to take a decision relating to Red Card-holders who, in the meantime, have been provided with Red Cards. If, on the facts and in the circumstances, a detoxification of land is required to be issued in view of individual unit, allowed in favour of the son of the original land-holder i.e. Surva Bansh Ojha, he will issue such notification after cancellation of Red Cards. The Collector will try to accommodate the Red Cards holders by setting them over some other lands.

11. In view of the clear finding and the direction of this Court, the Collector had no option but to consider the entitlement of the petitioners. As a matter of fact, the interveners had contested the claim of the landholder before this Court in the writ petition and also filed Miscellaneous case No. 57/98-99 in which the impugned orders have been passed.

12. As regards the submission that the Collector should have maintainer status quo till disposal of the letters patent appeal, Counsel for the State expressed doubts as to maintainability of the appeal when the State apparently had no grievance against the order as it had not preferred any appeal. Be that as it may, admittedly, no stay order has been passed by this Court in LPA No. 1336/98. A definite direction to consider the claim of the Red Card-holders having been made the Collector had no option but to consider the matter and pass suitable order. The order that he has finally passed is in accordance with the decision of this Court. He has also taken into account the interest of the petitioners by observing that in case the claim of the land-holder is rejected in the LPA, the settlement made in their favour shall stand restored.

13. In the result, I do not find any merit in this writ petition which is accordingly, dismissed. No costs.

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