

Smt. Savitri Devi and ors. Vs. State of Bihar and ors.

Smt. Savitri Devi and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/124757

Court : Patna

Decided On : May-18-2007

Judge : Aftab Alam, J.

Acts : Bihar Land Ceiling Act - Sections 45B

Appeal No. : Civil Writ Jurisdiction Case No. 11302 of 2004

Appellant : Smt. Savitri Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Ajay, Standing Counsel III (Ceiling)

Advocate for Pet/Ap. : Surya Bhushan Pd. Singh and Nand Bansh Nr. Singh, Adv.

Disposition : Petition allowed

Prior history : Aftab Alam, J. 1. Heard Mr. Surya Bhushan Prasad Singh for the petitioners and Mr. Ajay, Standing 2. Counsel III (Ceiling) representing the State. 3. The petitioners seek to challenge the order, dated 27.12.2003 by which the Collector, Sitamarhi in purported exercise of powers under Section 45B of the Bihar Land Ceiling Act directed to reopen the proceedings of Land Ceiling Case No. 2 of 1973-74/30 of 1992 that was earlier closed in favour of the land-holder. 4. Petitioner No. 1 is the widow o

Judgement :

Aftab Alam, J.

1. Heard Mr. Surya Bhushan Prasad Singh for the petitioners and Mr. Ajay, Standing
2. Counsel III (Ceiling) representing the State.
3. The petitioners seek to challenge the order, dated 27.12.2003 by which the Collector, Sitamarhi in purported exercise of powers under Section 45B of the Bihar Land Ceiling Act directed to reopen the proceedings of Land Ceiling Case No. 2 of 1973-74/30 of 1992 that was earlier closed in favour of the land-holder.
4. Petitioner No. 1 is the widow of Kameshwar Prasad Tiwari @ Kameshwar Tiwari and petitioners 2 to 8 are his sons, daughters and descendents. Earlier land ceiling proceedings were held against Kameshwar Prasad Tiwari that went through several rounds. For the present, it is not relevant to go into the details of the earlier proceedings. Suffice it to note that Land Ceiling Case No. 2 of 1973-74 held against Kameshwar Prasad Tiwari was finally dropped by order, dated 15.06.1983 passed by the Additional Collector, Sitamarhi. In that order, the Additional Collector found and held that (i) The second son of the land-holder, Kamlesh Kumar Tiwari (petitioner No. 3 in this case) had attained majority on 9.9.1970, (ii) the draft statement wrongly included lands belonging to others, lands validly sold by the land-holder, lands that were given by the land-holder to his daughters under valid gifts and lands voluntarily surrendered to the State. On excluding those lands from the total area as shown in the draft statement, the land-holder was left with 87.16-1/2 acres of Class-IV lands and (iii) as the land-holder was entitled to three units, equivalent to 90 acres of Class-IV lands, there was no surplus in his hands.
5. On 21.08.1992, the Collector, Sitamarhi issued a notice in his name to show cause why Land Ceiling Case No. 2 of 1973-74/30 of 1992 be not reopened under Section 45B of the Act. On 21.09.1992 the present petitioners appeared before him and made an application for substitution in place of the land-holder

Kameshwar Prasad Tiwari who had died on 13.05.1992 and on 20.10.1992, they filed a detailed show cause submitting that there was no ground for reopening the proceedings and praying that the matter be closed. The matter lay dormant before the Collector for a long time but finally by the impugned order, dated 27.10.2003, he directed the case to be reopened.

6. From a perusal of the impugned order, it appears that the Collector considered the question of reopening the proceedings on the basis of three points which are as follows:

1. In the orders passed by the Additional Collector on 30.12.1981 and 14.02.1983, a total area of 45 bighas 15 dhurs was directed to be excluded on the basis of the gifts made by the land-holder in favour of his daughters. But in the final order, dated 15.06.1983 the Additional Collector allowed exclusion of 69.04 acres as gifts to the daughters. Since the gift deeds were no longer available on the record, the difference in the areas remained unexplained.

2. In the final order, the Additional Collector had allowed deduction of 7.36 acres of land on the ground that those lands actually did not belong to the land-holder and those were wrongly recorded in the Khatiyani in his name.

3. The land-holder was able to get a separate unit for his second son Kamlesh Kumar Tiwari in the absence of any solid proof. The Circle Officer had described him as 12 years old on 9.9.1970.

7. The petitioners in their show cause gave replies to all the three points and also produced the gift deeds executed by the land-holder in favour of his daughters that were taken back by him after the proceeding was dropped by the Additional Collector by his order, dated 15.06.1983.

8. On a consideration of the submissions made by the petitioners and on examination of the materials on record including the four gift deeds produced by the petitioners, the Collector found that there was no error in regard to the area covered by the four gift deeds in favour of the daughters. He, however, observed that it was not clear from the record whether informations were sent to the

Collectors of the districts where the four daughters were married and as to whether or not any action was taken in those districts to club together the lands held by the daughters with the lands of their respective spouses in the land ceiling cases held against them. He further observed that this issue thus became a subject of further enquiry. This actually does not form a ground for reopening the proceeding against the present petitioners and the order is, therefore, silent on that issue.

9. The Collector then considered the second point and found that a due enquiry was held in which it was found that an area of 4.52 acres under Dumra Circle, 2.55 acres in Sursand and 0.29 decimals in Belsand were as a matter of fact under the control and possession of different people and on that basis an area of 7.36 acres was excluded from the draft statement. He did not find any error on this score also.

10. Coming finally to the third point, the Collector seems to have taken the view that it provided a good ground for reopening the case. The Collector observed that in the final order passed by the Additional Collector, Kamlesh Kumar Tiwari was held to be major on 9.9.1970 on the basis of the same materials (voters list, horoscope, affidavit by the Jyotishi and a medical certificate) which the Additional Collector had earlier rejected. He also observed that in the report of the Anchal Adhikari, the age of Kamlesh Kumar Tiwari was shown as 12 years on 9.9.1970. The learned Collector accepted the submission made by the State Counsel that since the land-holder was claiming a separate unit on the plea that his second son Kamlesh Kumar Tiwari was a major on 9.9.1970, the onus was heavily on him to prove the fact by cogent and unimpeachable evidences and that he should have produced the matriculation certificate as proof of his son's age. In this regard, the Collector seems to have committed a serious error.

11. It is well settled that on the issue of the age of any member of the land-holder's family, the onus is equally on the two sides. If the State tries to divest the land-holder of any land held by him on the ground that any member of his family was not major on 9.9.1970, the onus is equally on the State to lead evidences to prove the correct age of the concerned person. It is equally well settled that Section 45B

of the Act is not an appellate power but it is a power to be used circumspectly in case some new materials came to the notice of the authorities that were not earlier on record and that might lead to a different conclusion. In the impugned order, there is nothing to show that the Collector came to notice some new material(s) relevant to determine the age of Kamlesh Kumar Tiwari on 9.9.1970.

12. This is not all. After dealing with the question of the age of Kamlesh Kumar Tiwari on 9.9.1970, the Collector proceeded to observe that the Late Kameshwar Prasad Tiwari was married to the daughter of Badri Narayan Singh (deceased) whose wife Singheshwari Devi had 59.93-3/4 acres of land in her name. She had only four daughters and no son. Kameshwar Prasad Tiwari had given an affidavit that she had not received any land from the side of his wife. The Collector doubted this statement and observed that this too was a matter of investigation as to how much land fell in the share of petitioner No. 1 and whether or not that area was clubbed together with the lands of Kameshwar Prasad Tiwari for the purpose of the land ceiling case. According to the Collector, this also constituted a ground for reopening the case.

13. The settled position of law is otherwise. It is repeatedly held by the Court that a proceeding can not be reopened in exercise of the powers under Section 45B of the Act for a roving and fishing enquiry. Section 45B of the Act can be used only if the authorities got some definite information/material that was earlier not in their possession. In case, there were materials before the Collector to indicate that petitioner No. 1 had actually received certain lands from her parents and that were omitted to be included in the land ceiling case against her husband, the position might have been otherwise. But the reopening of the case can not be allowed to make an enquiry into that aspect of the matter.

14. Thus viewed from any angle, it appears that the Collector had passed the impugned order for reasons that are not at all germane to reopening of a case under Section 45B of the Act. The order is, therefore, clearly bad and unsustainable. It is accordingly set aside.

15. In the result, this writ petition is allowed but with no order as to costs.

