

Prabhawati Devi and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-25-1993

Judge : S.B. Sinha and Radha Mohan Prasad, JJ.

Acts : Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1962 - Sections 45C; Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 - Sections 15; [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Jurisdiction Case No. 10252 of 1992

Appellant : Prabhawati Devi and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : B.P. Verma, S.C.

Advocate for Pet/Ap. : Kamal Nayan Choubey, Arbind Nath Pandey, Arun Kumar Mishra

Disposition : Petition dismissed

Judgement :

S.B. Sinha, J. 1. This application is directed against an order dated 26-8-1992 passed by the Collector, Rohtas at Sasaram (Respondent No. 2) whereby and whereunder he dismissed the application filed by the petitioners for re-opening of

the case.

2. The fact of the matter lies in a very narrow compass.

3. One Sheojogi Yadav (since deceased) was the land holder. A ceiling proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the said Act') being Ceiling Case No. 76 of 1975-76 was initiated against him. Petitioners are his daughters and Respondents Nos. 3 to 5 are his sons. Respondents Nos. 6 and 7 are also his daughters and Respondent No. 8 is his widow. The said Sheojogi Yadav is said to have been holding 28.91 acres of land and in the aforementioned land ceiling proceeding an area of 4.77 acres of lands were declared surplus in term of the

district gazette dated 16-8-1980 issued under Section 15(1) of the said Act.

4. The contention of the petitioners is that as the aforementioned Sheojogi Yadav died on 1-8-1980, they having not been substituted, the entire proceeding is vitiated in law.

5. Mr. Kamal Nayan Choubey, learned counsel appearing on behalf of the petitioners has submitted that Respondent No. 2 committed illegality in passing the impugned order in so far as he relied upon the provisions of Order XXII, Rule 6 of the Civil P.C, Learned counsel submitted that the said Act is a self-contained Code and in that view of the matter, the provisions of Order XXII of the Code of Civil Procedure cannot be said to have any application whatsoever in the said proceedings.

6. Learned counsel further submitted that in *Balram v. The IIIrd Additional District Judge*, AIR 1983 SC 1137 : (1983 All LJ 543) upon which reliance has been placed by the State, it has been held by the Supreme Court that the provisions of Order XXII of the Code of Civil Procedure applied in view of the specific provision contained in Section 38(1) of the U.P. Imposition of Ceiling on Land Holdings Act (I of 1961) which statute was the subject-matter of the consideration therein.

7. Learned counsel relying upon a Division Bench decision of this Court in Smt. Savitri Devi Drolia v. The State of Bihar, 1977 BBCJ 455 : (AIR 1978 (NOC) 150 (Pat)) submitted that upon the death of a landholder the entire proceedings become nullity.

8. Mr. Choubey has further drawn our attention to the statements made in the supplementary affidavit for the purpose of showing that the proceedings should have

been re-opened on other grounds also.

9. From a perusal of the impugned order

the following facts appear to be admitted.

The Ceiling proceedings was decided against the landholder and an appeal and revision against the said order was dismissed. A writ petition was filed by the original landholder in this Court being C.W.J.C. No. 5176 of 1977 which was dismissed by an

order dated 4-1-1978. Thereafter the records were sent to the Revenue Department for its sanction so that the notification under Section 15(1) of the said Act may be issued and the sanction of the Revenue Department was communicated to the Collector by its letter No. 3870 dated 15-9-1979. Sheojogi Yadav died on 1-8-1980 and the notification under S, 15(1) of the said Act was published in the district gazette on 16-8-1980.

10. It is true that the said Act is a self-contained Code, In Savitri Devi Drolia's case (supra) the Division Bench proceeded on the basis that there was no provision under the Act for substitution of the legal heirs or representatives and on that basis it was held that a proceeding cannot be contained against a dead person. '

11. However, the legislature inserted Section 45-C in the said Act by Act No. 55 of 1982. In terms of the aforesaid provision, the said section has been deemed always to have been inserted. Section 45-C of the Act was, therefore, evidently given retrospective effect and retroactive operation, as a result whereof the ratio

laid down by the Division Bench in Savitri Devi Drolia's case was completely wiped off.

12. In this view of the matter, Savitri Devi Drolia's case cannot be said to have any binding force any longer.

13. Section 45-C of the said Act reads thus : 'Substitution of legal representative in case of death of land-holder -- If the landholder dies during the pendency of a proceeding, appeal or revision under this Act, the Collector or the appropriate authority, as the case may be, shall on an application made in this behalf or on his own motion substitute the name of the legal representatives in the manner prescribed in the Rules, and the proceeding, appeal or revision shall thereon continue to proceed against the substituted land-holder or holders.

14. From a bare perusal of the aforementioned provision, it is evident that the Collector or the appropriate Authority has the jurisdiction to substitute the heirs and legal representatives of the deceased land-

holder, who has died during the pendency of a proceeding, appeal or revision under the said Act.

15. Rule 55 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 which is relevant for the purpose of disposal of this application read thus:

Procedure for substitution of legal representative in case of death of the land-holder--(1) The application for the substitution of legal representative under Section 45-C shall be filed in Form L. C. 29 within thirty days of death of the land-holder by the legal representative of the deceased land-holder.

(2) On receipt of the application under Sub-rule (1) the Collector or the appropriate authority shall substitute the name of the legal representative and proceed with the case.

(3) Where no application is received within the period prescribed under Sub-rule (1), Collector or the appropriate authority shall proceed to substitute the name of

the legal representative on his own motion.

(4) Where a question arises as to whether any person is or is not the legal representative of the deceased land-holder, such question shall be determined by the Collector or the appropriate authority.'

16. In terms of Sub-rule (1) of Rule 55 aforesaid, an application for substitution has to be made by the legal representative within one month from the date of death. In terms of Form L. C. 29 also the legal representative may make a prayer before the Collector or the other authorities to be substituted in place of the landholder in a particular case by filling up the blank in the relevant column. Since pending in the court of.....'

17. From a conjoint reading of the provisions of Sub-rule (1) of R, 55 as also Form No. L. C. 29 there cannot be any doubt whatsoever that substitution of the heirs and legal representatives of the deceased landholder is possible only when a proceeding is pending before the Collector or appeal or revision or before any other authority.

18. Admittedly as on 1-8-1980, no proceeding was pending. The objection filed by the landholder had been disposed of and even the appeal and revision preferred by him had been rejected. It is also admitted that the writ petition filed by the landholder in this Court against the said orders has also been rejected. It also stands admitted that even the Revenue Department has accorded its sanction for publication of the notification.

19. It was, thus, in my opinion not necessary for the Collector to substitute the names of the heirs and legal representatives of the aforementioned Sheojogi Yadav who died on 1-8-1980 although by that date the notification under Section 15(1) of the said Act had not been published. Substitution of heir or legal representative is necessary in a proceeding before the appropriate authority so as to enable his heirs and legal representatives to take steps therein, as on failure to do so they may be prejudiced. An appeal can be preferred from an order under Section 10(3) of the said Act upon publication of the notification under Section 11(1) of the said Act. The said notification has already been published and the

landholder himself had filed an appeal, revision application as also writ application before this Court. In my opinion, therefore, the notification under Section 15(1) of the said Act was not vitiated by reason of non-substitution of the heirs and legal representatives of the aforementioned Sheojogi Yadav.

20. In any event, the petitioners or other heirs and legal representatives of the aforementioned Sheojogi Yadav also did not file any application for substitution of their names in place of the original landholder in the prescribed form in prescribed manner and within the prescribed time. In that view of the matter, the petitioners or other heirs and legal representatives of the deceased landholder, thus, cannot take advantage of their own wrong.

21. So far as other contentions raised by the petitioners in the supplementary affidavit are concerned, the same cannot be taken note by this Court inasmuch as admittedly the said questions were not raised by the petitioners, in the application under Section 45-B of the said Act.

22. It is now well known that the High Court generally does not take into consideration the materials which were not placed before the Tribunal.

Reference in this connection may be made to *Karnani Properties Ltd. v. State of West Bengal*, AIR 1990 SC 2047 : (1990 Lab IC

1677).

23. For the reasons aforementioned, there is no merit in this application and this writ application is dismissed. But in the facts and circumstances of this case, there shall be no order as to costs.

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