

Dipti Mookherjee and ors. Vs. State of Bihar and ors.

Dipti Mookherjee and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/514945

Court : Jharkhand

Decided On : Feb-06-2004

Reported in : [2004(1)JCR508(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Urban Land (Ceiling and Regulation) Act, 1976 - Sections 34

Appeal No. : CWJC No. 2082 OF 1996 (R)

Appellant : Dipti Mookherjee and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Shamim Akhtar, SC II

Advocate for Pet/Ap. : P.K. Prasad, Adv.

Disposition : Application allowed

Judgement :

Amareshwar Sahay, J.

1. In view of the short question involved in the present writ application, it is not required to state the facts of the case in detail. According to the case of the original petitioner, she is the widow of Sir Birendra Nath Mookherjee. The property comprised within Municipal Survey plot Nos. 1608 and 1609 in Mouza Konka,

District, Ranchi was recorded in the Municipal Survey record of rights published in the year 1929 in the name of Sir R.N. Mookherjee i.e. father-in-law of the original petitioner. Sir R.N. Mookherjee died leaving behind his only son Sir Birendra Nath Mookherjee who constituted a joint family consisting of himself, his major son R.N. Mookherjee, his wife i.e. the original petitioner and two daughters namely, Gita Devi and Nita Devi.

2. Further case of the original petitioner i.e. namely Ranu Priti Mookherjee is that Sir Birendra Nath Mookherjee died on 4.11.1982 leaving behind the following persons who are illustrated in the following geological table.

R.N. MOOKHERJEE

Sir BirenMookherjee-Ranu Priti Mookherjee (Wife)

_____ | _____

|||

Ramendra Nath Gita Nita

| _____ | _____ | _____

|||||

| Ashis Arup Nisha Rahul

_____ | _____

||||

Rajendra Birendra Mriganayani Hemangini

3. According to the original petitioner i.e. namely Ranu Priti Mookherjee, for the purpose of Ceiling Act there were four families i.e. first family of Sir Biren and Ranu Priti Mookherjee, second family of Ramendra Nath and wife, third family of Gita and husband and fourth family of Nita and husband and thus according to the original petitioner i.e. namely Ranu Priti Mookherjee, since the property inherited

by Sir Birendra Nath Mookherjee was ancestral property and therefore, each of the four family described above became entitled to retain vacant land under the provision of the Ceiling Act.

4. It is further stated that Sir Birendra Nath Mookherjee executed a Will in the year 1937 including the property in question but the Will so far it related the property in question became in-operative as Ceiling Act came into the force when Sir Birendra Nath Mookherjee was still alive and till then the Will had not been probated. However, the Will was probated in the year 1984 being granted by the Calcutta High Court much after the Ceiling Act came into force.

Sir, Ramendra Nath Mookherjee being constituted attorney of Sir Birendra Nath Mookherjee filed a statement under Section 6(i) of the Ceiling Act in relation to the land at Ranchi, wherein it was stated that there was no land in excess to the ceiling limit. A Land Ceiling Case No. 416 of 1976 was initiated whereby the Government of Bihar proposed to acquire the lands i.e. plot Nos. 1608 and 1609 situated at Ranchi presuming the same to be property of Sir Birendra Nath Mookherjee alone.

5. The original petitioner i.e. namely Ranu Priti Mookherjee filed an objection before the respondent No. 4 i.e. the Deputy Commissioner-cum-Competent Authority, under the Urban Land (Ceiling and Regulation) Act, 1976, who vide order dated 29.12.1986 as contained in Annexure 4 to the writ application passed an order declaring the aforesaid land to be in excess under the provision of Section 10(1) of the Ceiling Act after recording a finding that Sir Birendra Nath Mookherjee had no issue and the original petitioner i.e. Ranu Priti Mookherjee was only entitled to retain the land within the ceiling limit.

6. According to the original petitioner i.e. namely. Ranu Priti Mookherjee, the finding of the competent authority that Sir Birendra Nath Mookherjee died issueless and had no issue was completely erroneous. Consequent to the order of the respondent No. 4 dated 29.12.1986, a notification was issued in the local newspaper on 30.3.1987 whereby the land in question was sought to be acquired under the provision of the Ceiling Act declaring it to be in excess of the ceiling limit.

7. Being aggrieved by the order dated 29.12.1986 of the respondent No. 4 the original petitioner i.e. namely Ranu Priti Mookherjee along with others filed revision application under Section 34 of the under the Urban Land (Ceiling and Regulation) Act, 1976 and prayed for re-opening the case.

8. According to the original petitioner i.e. namely Ranu Priti Mookherjee, after a thorough enquiry into the matter, by order dated 10.12.1990 as contained in Annexure 9 to the writ application, the Minister of Revenue and Land Reforms, Government of Bihar, ordered that the family of the original petitioner i.e. namely Ranu Priti Mookherjee be treated to be of four units and thereby exemption be granted, according to the provision of under the Urban Land (Ceiling and Regulation) Act, 1976. The said order of the Minister was quasi-judicial order and was passed in exercise of power under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976.

9. The grievance of the original petitioner i.e. namely Ranu Priti Mookherjee is that although the Minister of Revenue and Land Reforms, Government of Bihar passed quasi-judicial order on 10.12.1990 but thereafter on a suo motu and uncalled for noting of the respondent No. 3, Sri Dev Narayan Yadav who became the new Minister for Revenue and Land Reforms by an another order dated 10.12.1994 totally negated the earlier quasi- judicial passed by his predecessor Minister under Section 34 of the Ceiling Act.

10. The learned counsel for the petitioners, Mr. P.K. Prasad has vehemently argued that since there is no provision for review under the Urban Land (Celling and Regulation) Act, 1976 and therefore, Sri Yadav the successor Minister of Revenue and Land Reforms had no jurisdiction at all to upset the quasi-judicial order dated 10.12.1990 passed by his Predecessor Minister. He submits that power of review has to be conferred by law but since there is no power of review under the Urban Land (Ceiling and Regulation) Act, 1976 and therefore, the order dated 10.12.1990 passed by the Minister which the quasi-judicial in nature could not have been reviewed at call by passing another order as contained in Annexure 10 to the writ application. In support of his contention, he has relied on the decision in the case of Patel Narshi Thakershi and Ors. v. Pradyumansinghji

Arjunsinghji, reported in AIR 1970 SC 1273 and in the case of Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya Sitapur, reported in AIR 1987 SC 2186.

11. On the other hand, the learned counsel for the respondents, on the point raised by the petitioner, has only submitted that the order impugned passed by the Minister is perfectly legal and valid and he was having the jurisdiction to pass the impugned order.

12. The Supreme Court in the case of Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsinghji, reported in AIR 1970 SC 1273 (supra), has held that it is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

13. In the case of Dr, Smt, Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya Sitapur, reported in AIR 1987 SC 2186 the Supreme Court has held that it is now well settled that quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.

14. In the present case nothing has been brought to the notice of this Court from which it can be gathered that the Successor Minister who passed the order impugned as contained in Annexure 10 to the writ application reviewing the earlier order passed by his Predecessor Minister, had the power to review the order as contained in Annexure 9 to the writ application, which was a quasi-judicial order passed under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976.

15. Therefore, relying on the aforesaid two decisions of the Supreme Court, I hold that the order as contained in Annexure 10 to the writ application is absolutely without jurisdiction and therefore, it is unsustainable.

16. Consequently this application is allowed and order impugned as contained in Annexure 10 to the writ application is hereby quashed. Petition allowed.