

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8521 of 1998

1. Suresh Yadav.
2. Kuldeo Yadav. Both sons of Late Bahadur Mahto, R/O Vill.- Ghutbay Tola, Tilaiya, P.S. & Anchal- Chakai, Distt.- Jamui.
3. Bijay Mahto @ Bijo Mahto @ Chowa Mahto, S/O Bahadur Mahto, R/O Village- Ghutbay Tola Tilaiya, Police Station and Anchal- Chakai, District- Jamui.
4. Dhanu Mahto @ Dhaneshwar Yadav, S/O Late Bahadur Mahto, R/O Village- Ghutbay Tola Tilaiya, Police Station and Anchal- Chakai, District- Jamui.

.... Petitioners

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Old Secretariat Building, Bihar, Patna.
3. The Additional Collector (Land Ceiling), Monghyr.
4. Deputy Collector, Land Reforms, Jamui.
5. Ugan Mahto, S/o Late Jago Mahto, R/O Village- Ghutbey Tola Tilaiya, Police Station- Chakai, District- Jamui.
6. Mekhani Devi, Widow of Late Jago Mahto, R/O Village- Ghutbey Tola Tilaiya, Police Station- Chakai, District- Jamui.
7. Ramdeo Yadav.
8. Kamdeo Yadav.
9. Santu Yadav @ Shanti Yadav.
10. Binod Yadav. All sons of Late Horil Mahto @ Horil Yadav, R/O Vill.- Tola Tilaiya, P.O.- Telwa Bazar Via- Simultalla, P.S.- Chakai, Distt.- Jamui.
11. Budhni Devi, widow of Late Padu Mahto, R/O Village- Ghutbey Tola Tilaiya, Police Station- Chakai, District- Jamui.
12. Madoli Mahto, S/o Late Jharo Mahto, R/O Village- Ghutbey Tola Tilaiya, Police Station- Chakai, District- Jamui.
13. Rameshwar Mahto, S/o Late Shyam Mahto, R/O Village- Ghutbey Tola Tilaiya, Police Station- Chakai, District- Jamui.
14. Dhaneshwar Yadav S/o late Kalo Devi, R/O Vill.- Bashara, P.S.- Chandramandi, Distt.- Jamui.

.... Respondents

Appearance :

For the Petitioners : Mr. Kamal Nayan Choubey, Sr. Advocate.

For the State : None.

For the private
Respondents : Mr. Ram Suresh Rai, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

8 19-05-2015

Heard Mr. Kamal Nayan Choubey, learned senior counsel for the petitioners and Mr. Ram Suresh Rai, learned senior counsel appearing for the private respondents. None appears on behalf of the State.

The petitioners are aggrieved by the order dated 17.05.1990, passed by the Additional Member, Board of Revenue, in Revision Case No. 112 of 1983, whereby the Additional Member, Board of Revenue, while dismissing the revision application filed by the petitioners has affirmed the appellate order dated 17.05.1983 passed by the Additional Collector(Land Ceiling), Munger as well as the order dated 23.01.1983, passed by the Deputy Collector Land Reforms, Jamui, in Land Ceiling Case No. 104 of 1975-76.

The orders impugned have been questioned on the following grounds:-

(a) By virtue of incorporation of Section 32(B) under the Amending Act No. 55 of 1982 to the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act,

1961(hereinafter referred to as 'the Act') all proceedings pending on the prescribed date i.e., 09.04.1981 stood wiped out, to be initiated afresh from the stage of Section 10(1) of 'the Act';

(b) The impugned orders, whereby the petitioners were awarded only two units is based on no evidence;

(c) Though the land belongs to joint family but other co-sharers of the property who are recorded tenants, were neither noticed nor heard nor any unit was allotted in their favour; and

(d) The classification of land is based on no evidence.

Learned senior counsel appearing for the parties have relied upon a Full Bench judgment of this Court reported in 1984 PLJR, 908 (Harendra Prasad Singh Vs. State of Bihar) to submit that the legal intendment of Section 32(B) of 'the Act' stands explained in the judgment and it has been held that all proceedings pending as on 09.04.1981 would be deemed to be wiped out, to be initiated afresh in terms of Section 10(1) of 'the Act'. It is submitted that the statutory authorities including the Additional Member, Board of Revenue, even after noticing this fact has proceeded to negate the claim of the petitioners which is contrary to the Full Bench decision. Learned counsel have though very fairly admitted that the Full Bench judgment was not brought to the notice of the statutory authorities at any stage of the

proceeding.

I have heard learned counsel for the parties and perused the records.

There is no room for any confusion as to the legal position settled by the Full Bench judgment passed in the case of Harendra Prasad Singh (Supra). In fact, the Additional Member, Board of Revenue, while dismissing the revision application of the petitioners though has taken note of the fact that the ceiling proceedings were of 1975-76 bearing Land Ceiling Case No. 104 of 1975-76 and in which the draft statement under Section 10(2) of 'the Act' was published on 11.12.1982 i.e., after the Amending Act No. 55 of 1982 incorporating Section 32B to 'the Act' became effective on 09.04.1981 but then he has failed to appreciate the legal intendment of the provision. Even the other arguments advanced by the learned counsel also merit consideration. Its inexplicable as to the lapse of the petitioners in not drawing the attention of the Revisional Authority towards the Full Bench decision.

Be that as it may, in my opinion, all the issues raised by learned counsel would be taken care of if following the intendment of Section 32B of 'the Act', the proceedings are initiated afresh from the stage of Section 10(1) of 'the Act'. In fact

where the proceedings are unsustainable on the issue of statutory violation of Section 32B of 'the Act' in view of the decision in Harendra Pd. Singh (Supra), there is no need to delve into other issues raised in this writ petition at this stage.

Having heard learned counsel for the parties and taking note of the Full Bench decision of this Court rendered in the case of Harendra Prasad Singh (Supra). I would not detain myself any further to hold that the impugned orders are in the teeth of the Full Bench decision, illegal and also contrary to the statutory provisions and are accordingly set aside. The matter is remitted back to the Deputy Collector Land Reforms, to proceed in the matter afresh from the stage of Section 10(1) of 'the Act' and dispose of the same in accordance with law and after opportunity of hearing to all concerned.

The writ application is allowed but without any order as to costs.

U.K./-

(Jyoti Saran, J)

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