

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12831 of 1992

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1. Akhauri Vijay Kumar, S/o Late Akhauri Anirudh Prasad
 2. Akhauri Rajendra Kumar S/o Late Akhauri Anirudh Prasad
 3. Akhauri Prashant Kumar-grand son (S/o Late Akauri Braj Ballav Prasad)
 4. Akhauri Nishant Kumar, grand son (S/o Late Akauri Braj Ballav Prasad)
 5. Akhauri Shushant Kumar, grand son (S/o Late Akauri Braj Ballav Prasad)
 6. Smt. Meena Prasad, D/o of Late Akhauri Anirudh Prasad
 7. Smt. Nilam Sinha, D/o of Late Akhauri Anirudh Prasad

.... Petitioners

Versus

1. The State of Bihar
2. Secretary & Commissioner, Department of Revenue and Land Reforms, Bihar, Old Secretariat Building, Patna
3. The Addl. Member, Board of Revenue, Bihar, Old Secretariat Building, Patna
4. Collector of Gaya at & PO Gaya District Gaya
5. Addl. Collector (Land Ceiling), at & PO Gaya District Gaya

.... Respondents

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Appearance :

For the Petitioner : Mr. Amrendra Narayan, Advocate

For the Respondents: Mr. Rajiv Kr. Singh, GP 2

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-04-2015

This writ application was earlier heard by a division Bench of this court. There were three main issues primarily involved before the division Bench. The primary issue was whether an unmarried daughter in the family was entitled to one separate unit under section 4 of the Bihar Land Ceiling Act, 1961. The other issues before the division Bench were as to whether the classification of lands was properly done by the revenue authorities and the land holder would be entitled to claim a separate unit for Vijay Kumar, who attained majority on the date on which notice under section 16(3) of the Act



was issued. It appears that there was yet another issue before the division Bench as to whether the Board of Revenue rightly held that lands had been transferred merely to delay the proceedings or to defeat the provisions of the Act. As regards the main issue as to whether the land holder would be entitled to one separate unit for unmarried daughter, the Hon'ble Judges differed in their opinion. On this issue a Special Bench of this court in case of *K. M. Zuberi v. State of Bihar* reported in 1986 PLJR 87, by a majority view had held that personal law applicable to the family is not to be taken into consideration for determination of its holding under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The said Bench also held that if major sons of a family governed by Mitakshra school of Hindu law were entitled to separate unit under the Act then the major sons of the family governed by Mahommedan Law are also entitled to the same.

By the time the present matter was taken up by the division Bench, the judgement of the Special Bench of this court in the case of *K. M. Zuberi v. the State of Bihar* (supra) was under challenge before the Supreme Court and an interim order of stay, upon the said judgement of the High Court was granted.

Hon'ble Mr. Justice S. B. Sinha, in view of stay granted by the Supreme Court in the said case, did not follow the ratio laid down



by the Special Bench in case of *K. M. Zuberi v. the State of Bihar* (*supra*) whereas Hon'ble Mr. Justice Radha Mohan Prasad, differing with the said view of Hon'ble Mr. Justice S. B. Sinha, observed that when the operation of the judgement was stayed, only operative portion of the judgement stood stayed, but reasons assigned in the judgement in the case of *K. M. Zuberi* (*supra*) cannot be said to be have lost its force.

This is to be noted that Hon'ble Mr. Justice S. B. Sinha came to a categorical conclusion that an unmarried daughter cannot be granted additional unit during the lifetime of her father unless she herself is a land holder either being raiyat, under raiyat or a mortgagee etc. Hon'ble Mr. Justice Radha Mohan Prasad, on the other hand, following the judgement of Special Bench in case of *K. M. Zuberi* (*supra*) came to a conclusion, that if the land holder, governed by Mitakshra school of Hindu law, is entitled to claim separate unit for major son and following the same, the land holder governed by Mahommedan law would also be entitled to claim separate unit for major son and in such circumstance, there was no justification to deprive the land holder to claim separate unit for an unmarried daughter.

There being difference of opinion on this point, in the judgement delivered on 10.11.93 the matter has been placed before

me.

When the matter was earlier placed on 13.12.1993, after difference of opinions were recorded, the parties were given liberty to make a motion after disposal of Civil Appeal No. 4336 of 1986 (*State of Bihar v. K. M. Zuberi*). The Civil Appeal No. 4336 of 1986 came to be disposed of by a judgement dated 09.02.1996, *State of Bihar Vs. K. M. Zuberi* (AIR 1996 SC 1496). The Supreme Court on the main issue involved, held in paragraph 14 as follows:-

“14. An analysis of the aforesaid provisions unequivocally indicate that under the Act the ceiling area is required to be determined of a "family" as defined in Section 2(ee) and, therefore, the land-holder of whose ceiling is going to be determined may be either a person, his or her spouse, and minor children. A major child whether belonging to a Hindu family or a Mohammedan or Christian is not conceived of getting an additional unit while determining the ceiling area of a land holder A major son of a Hindu can get an independent ceiling determined provided he is raiyat within the meaning of Section 2(k) and has become a land-holder within the ambit of Section 2(g) but not as a successor to the land-holder whose ceiling is being determined on the ground that he has a right in the property by virtue of birth. In other words under the Act no distinction has been maintained between Hindu, Mohammedan, Christian for determination of the ceiling area in the hands of the land-holder. The majority view expressed by Chief Justice as well as by Justice Agrawal approached the problem on incorrect premise as if under the Act the adult son of a land-holder governed by Mitakshara School of Hindu Law has been given an additional unit. Minority view of Justice L. M. Sharma is wholly correct one. The ultimate conclusion, as expressed by the majority judgment in answering question No. 2 is, therefore, unsustainable in law. In our considered opinion, under the Act while determining the ceiling area in the hands of a land -holder whether governed by Mitakshara

law or governed by Mohammedan law no additional unit is given to an adult son of the land-holder and, therefore, the earlier view expressed by Patna High Court in Imamul Hassan Choudhrys case (AIR 1982 Pat 89)(FB) reported in 1982 Bihar Law Journal Reports P. 150 lays down law correctly.”

In the case of *State of Bihar v. K. M. Zuberi* (supra) the point of difference of opinion, thus, stands resolved with the Supreme Court judgement as to whether unmarried daughter will be entitled for separate unit or not and has been answered in negative.

So far as the issue of acquisition of land is concerned, I find that there was no difference of opinion in two judgements delivered by Hon’ble Mr. Justice S. B. Sinha and Hon’ble Mr. Justice Radha Mohan Prasad. Paragraphs 70 to 72 of the judgement of Hon’ble Mr. Justice S. B. Sinha are relevant on this point and are being quoted hereinbelow:-

“70. From a perusal of Annexure-5 to the writ application it appears that the petitioner categorically took the stand that the lands are not irrigated and therefore they cannot be classified as class III lands. It appears that the respondent No.5 while dealing with the objections of the petitioner had referred the question of classification of the lands to the Anchal Adhikari who in paragraph 5 of his report clearly stated that irrigational facilities are not available in respect of the lands in question.

71. The petitioners have contended that most of the lands in question has been recorded as “Bit” lands which are capable of producing very little crops.

72. In terms of Section 4(c) of the Act a land can be classified as class III lands; provided the same are irrigated or capable of being irrigated by ‘works which provides or are capable of providing water for only one season. Thus existence of ‘works’ for the purpose of

irrigation of the lands is a sin-quo-non for classifying the lands as class III lands. As it has not been found by the courts below that there exists any 'works', the question of the classifying the lands as class III lands did not arise. For that purpose, the parties are required to adduce their respective evidences and a finding of fact has to be arrived at on the basis thereof."

No difference of opinion is there on this point rather Hon'ble Mr. Justice Radha Mohan Prasad has recorded his agreement.

As apparently the point of difference of opinion stands resolved, the Collector, Gaya is directed to re-examine the matter on the acquisition of lands after giving opportunity to the petitioners as well as the State to adduce their respective evidences, in view of observations given in paragraphs 70 to 74 of the judgement delivered by Hon'ble Mr. Justice S. B. Sinha, to which agreement has been recorded by Hon'ble Mr. Justice Radha Mohan Prasad.

In terms of the judgement of Hon'ble Mr. Justice Radha Mohan Prasad, as recorded in paragraph 87, the petitioners shall be at liberty to file an application under section 37 of the Act before the Collector who, in turn, will be required to re-examine the matter.

Paragraph 87 of the judgement is being quoted hereinbelow:-

"87. Further, it appears that the contention of the learned counsel for the petitioner that the Board of Revenue has wrongly held that the land had been transferred with a view to delay the proceeding or defeat the provisions under the Act have escaped the notice of my learned brother. It was contended on behalf of the petitioner that the area of 13.72 acres of land should not have been included in the draft settlement as some had been

transferred prior to 1969 and other belong to completely different persons. Learned counsel has submitted that this aspect was completely ignored even by the Member, Board of Revenue (respondent no.3) who simply proceeded to consider the transfers made in the name of different persons in the year 1978 and, accordingly, held all such transfers to be illegal. In my opinion, the learned counsel is right. However, the proper course of the petitioner is to file an application under 37 before the Collector under the Act who would re-examine the matter and if he finds after due notice to the parties that such transfers made by the petitioner was permissible under the Act, he shall exclude the same from the acquisition.”

This writ application is disposed of in terms of the Supreme Court decision in the case of *State of Bihar v. K. M. Zuberi* (supra) read with the Division bench decision dated 10.11.1993.

(Chakradhari Sharan Singh, J)

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