

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4717 of 1994

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Pashupati Devi, wife of Balkeshwar Tiwari (deceased), resident of Village & P.O.
Rajepur, Police Station and Anchal Sahebganj, District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Muzaffarpur
3. The Additional Collector, Muzaffarpur
4. The Deputy Collector, Incharge Land Reforms, West Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh, Advocate
Mr. Satyapal Singh, Advocate

For the Respondent/s : Mr. Kundan Bahadur Singh, SC-22

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

ORAL JUDGMENT

Date: 24-04-2015

Heard learned counsel for the petitioner and the
State.

2. Petitioner is aggrieved by the gazette notification dated 24.01.1994 published in Muzaffarpur District Gazette No. 14 dated 17.02.1994, Annexure-1 issued under sub-section (1) of Section 15 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 whereunder 4.19 acres of land bearing plot nos. 717, 721, 40, 927 appertaining to khata no.69 of village Lakhna within Sahebganj Circle of District Muzaffarpur has been declared as surplus land of the land holder-petitioner.

3. It is submitted on behalf of the petitioner that earlier Ceiling Case No. 557/1974-75/ 102/1975-76 was initiated by

the authorities against her, in which order dated 18.04.1979, Annexure-2 was passed granting two units, one for the mother and another for the adult daughter and there was hardly any surplus land found in possession of the petitioner. Against the aforesaid order dated 18.04.1979 State did not prefer any appeal and the said order became final.

4. It is further submitted that without notice to the petitioner ceiling case was reopened resorting to the powers under Section 45B of the Act and after reopening the ceiling case impugned gazette notification was published on 24.01.1994. It is submitted that reopening of the case and publication of impugned notification acquiring 4.19 acres of surplus land from the petitioner is wholly without jurisdiction as prior to the reopening and publication of the gazette notification the petitioner was never heard.

5. It is also submitted on behalf of the petitioner that in the light of the judgment of this Court in the case of ***Ram Ratan Roy and another v. State of Bihar & Ors. 1999(3) PLJR 218*** daughter of the land holder, who was adult on 09.09.1970, is entitled to one unit. In this connection, reference is made to paragraph 9 of the said judgment, which is quoted hereinbelow for ready reference.

“9. So far as the claim of the landholder regarding separate units to his sister Ram Nagina Devi is concerned, it would be relevant to notice that



originally the land in dispute belonged to Dhuna Singh, the father of petitioner Upendra Narain Singh, who died sometime in 1966 after the commencement of the Hindu Succession Act. Therefore, in view of the Hindu succession Act, after the death of Dhuna Singh, his daughter Ramdulari Devi also became entitled for a share in the properties left by him. The respondents authorities have rejected her claim purely on a wrong assumption that on the appointed day she was married and aged about 37 years, therefore, not entitled to any share in the property left by her father unless it was determined by a civil court. Therefore, I conclude this issue with a direction to the respondent Additional Collector to allot a separate unit in favour of Ram Nangina Devi, sister of the landholder.”

6. Learned counsel for the State supported the impugned notification and submitted that true it is that after disposal of the ceiling case present gazette notification has been published acquiring the surplus land resorting to Section 45-B of the Act without notice to the land holder but the fact remains that daughter being not the member of the family, as defined under Section 2 (ee) of the Act, may not be entitled for separate unit, as in terms of the provisions of the Hindu Succession Act, 1956 she is entitled to a

share in her father’s unit.

7. I regret not to accept such submission in view of the judgment of this Court in the case of *Ram Ratan Roy* (supra) referred to above and quash gazette notification dated 24.01.1994 published in Muzaffarpur District Gazette No. 14 dated 17.02.1994, Annexure-1.

8. Writ petition is, accordingly, allowed.

(V.N. Sinha, J.)

Rajesh/-

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