**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5248 of 1996**

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Ramagya Giri, Chela of Basudeo Giri resident of village-Gurhanwa, P.S. Kundwa Chainpur, District- East Champaran, Motihari

.... .... Petitioner

Versus

1. State of Bihar
2. Additional Member, Board of Revenue, Bihar, Patna.
3. The Collector, East Champaran, Motihari
4. The Additional Collector, East Champaran, Motihari
5. Additional Sub-divisional Officer, Sikarahana, District- East Champaran, Motihari.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dronacharya
Mr. Binay Kant Mani Tripathi
Mr. Ajay Kumar Mishra
Mr.Arghesh Kumar

For the Respondent/s : Mr. Fakhruddin Ali Ahmad

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**

ORAL JUDGMENT

**Date: 23-07-2015**

Heard learned counsel for the petitioner and learned counsel for the State.

The writ petition has been filed seeking quashing of the order dated 9.3.1996 passed by the Additional Member, Board of Revenue in Case No.28 of 1995 and further to quash the order dated 30.5.1995 passed by the Collector, East Champaran, Motihari in Ceiling Appeal Case No.7 of 1993-94 as also the order dated 22.6.1992 passed by the Additional Collector, East Champaran, Motihari in Ceiling Case No.53 of 1990-91.

The short facts of the case are that Ceiling Case No.4 of 1974-

75 was initiated against the petitioner in which proceedings were dropped by order dated 4.7.1978 of the Additional Sub-divisional Officer, Sikarahana holding that the Math in question is a private Math and in this regard the application of the petitioner under Section 29 (2)(a)(2) has been rejected by the Collector by order dated 8.8.1975 on the ground that it is a purely private Math in which even the entry of the general public is prohibited and thus came to the conclusion that the properties of the Math became the private properties and all adult members mentioned in the genealogy ought to have been allotted one unit: one unit to the petitioner and one unit to his widowed mother, and thus they were found entitled to 60 acres of class-IV land whereas the petitioner was holding 50.30 acres of land which was within the ceiling limit.

Subsequently, the State Government by letter dated 20.7.1990 noted the fact that the mother of the petitioner had died on 16.10.1983 and the entire land would thus belong to the petitioner, as a result of which he would be entitled to only one unit and directed the Collector to reopen the proceedings under Section 45B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. Pursuant to the same by order dated 23.8.1990, the Collector issued notice to the petitioner and thereafter by order dated 1.7.1991 reopened the proceedings under Section 45B of the Act. The matter was, thereafter, heard by the Additional Collector (Ceiling), East Champaran, Motihari and giving wider shape to the proceedings after hearing the objectors and interveners came to the conclusion that the grant of one unit in the name of the mother was not on correct basis because the mother would not have any right and title in the land obtained in the succession of the Guru and for the said reason, the claim of the sister was also rejected and accordingly one unit of land was allotted to the petitioner. The appeal filed against the said order was also rejected by the Collector of the District by order dated 30.05.1995 holding that the petitioner had succeeded to the properties as the Mahanth of the Math after the death of his father who was the earlier Mahanth and thus his mother would have no share in the same. Thereafter, the revision filed by the petitioner was also rejected by the Additional Member, Board of Revenue by order dated 9.3.1996.

The petitioner has also filed the judgment and decree of Title Suit No.317 of 1982 dated 28.11.2002: Mahanth Ramagya- Plaintiff vs. The Bihar State Religious Trust Board and others-defendants which was filed for declaration that the properties in question, which are involved in the present matter also, are the personal properties of the plaintiff and that the Bihar Religious Trust Board and 14 other defendants have no right over the same and also for consequential permanent injunction which was decreed in favour of the petitioner holding that the properties in question were the private ancestral properties of the petitioner and neither the Bihar State Religious Trust Board nor any of the private defendants had any right or title over the same. The said judgment and decree was challenged by the Bihar State Hindu Religious Trust Board by filing Title Appeal No.19 of 2003, which was dismissed for default on 16.9.2004 and it is alleged that thereafter no steps have been taken by the Trust Board and the judgment and decree have become final.

Learned counsel for the petitioner submits that the earlier proceedings having been dropped on the ground that the Math in question was a private Math after considering the fact that the earlier petition of the petitioner under Section 29 of the Act (prior to its subsequent deletion) had been rejected, it was not open to the respondents to have come to a different conclusion in the matter, particularly when the reopening itself had been made on the sole ground that the mother of the petitioner had died on 16.10.1983 and thus the petitioner became entitled to only one unit. It is urged that the earlier finding of fact regarding the properties, being private properties and not the properties of any Public Trust, had not been reconsidered or directed to be reopened in the letter dated 20.7.1990 of the Revenue and Land Reforms Department, Government of Bihar nor in the order of reopening dated 1.7.1991 of the Collector, East

Champaran at Motihari and there was no question of the entire matter being raked up again by the Additional Collector in the impugned order dated 22.6.1992 for coming to different findings.

It is submitted that in any view of the matter, the said findings can have no relevance in view of the judgment and decree of the Civil Court, which has acquired finality.

So far as the question of the effect of the death on 16.10.1983 of the mother on the grant of additional unit is concerned, it is submitted by learned counsel for the petitioner that the said issue is no longer res integra and has already been decided by a learned single Judge of this Court in the case of Haricharan Chamar & Ors. Vs. The State of Bihar and others: 2000 (4) PLJR 708, in paragraph No.7 of which it has been held as follows:-

> "7. There is nothing in Section 18 to suggest that the unit already allowed to the land-holder, would vanish. I have no doubt in my mind that as the entitlement of the land-holder has to be considered with reference to, state of affairs as existing on the appointed day i.e. 9.9.1970, the subsequent events cannot wipe out or obliterate the unit already granted. That would not only be contrary to the provisions of Section 5 (2) (ii) of the Act but would also

be violative of general principles. What is sauce for the goose is also sauce for the gender and therefore, if a person is not entitled to unit even though he attains majority after 9.9.1970, the unit allowed on that day to a person cannot be taken away. If it were so, a time would come where the land-holders' family would be left with no unit, for in course of time the unit holders would die one by one and none will be finally left. In that case, Kapilmuni Ojha should be allowed a unit making the number of units three again. The object of the Ceiling Act is to determine ceiling area of the land-holder and acquire surplus land as on 9.9.1970. The Act also provides for settlement of the surplus lands in the prescribed manner, but not escheat to the State."

It is thus, submitted by learned counsel for the petitioner that the ceiling provisions have to be applied on the state of affairs existing on 9.9.1970 and on the said date the mother of the petitioner being alive, the grant of additional unit to her as held in the earlier ceiling proceedings could not be considered to be contrary to law and the very reopening on the said ground is contrary to law as laid down by this Court in the aforesaid decision in Haricharan Chamar's case (supra).

Learned counsel for the State has sought to support the orders of the ceiling authorities as also the appellate and revisional authorities. He is however unable to show as to what necessitated the ceiling authorities to reconsider the issue which had already been closed in the course of earlier ceiling proceedings, that too when the reopening had been made on the sole ground that the mother of the petitioner had died on 16.10.1983 and thus the petitioner became the sole person entitled to the lands having right and title and, therefore, he was entitled to only one unit under the Ceiling Act.

This Court further finds that the application of the petitioner under Section 29 of the Act, as it then existed, having been rejected by the respondents which order acquired finality and was taken as one of the grounds for treating the properties in question as private properties of the family of the petitioner, the same ought not to have been lightly reopened by the respondents as that was not the reason for the reopening of the proceedings.

Moreover, this Court is not in agreement with the observation of the Board of Revenue that the provisions of Section 29 of the Act having been withdrawn by an Ordinance by the State Government in the year 1995 and thus the exemption was deemed to have been withdrawn from the very beginning.

Considering the earlier finding in the application under Section 29 of the Act with regard to the nature of the properties, the respondents have also wrongly considered that the properties belong to the Math, which is a separate legal entity represented by the petitioner and thus it is the Mahanth who would be entitled to the same in that capacity. The same appears to be totally contrary to law. Once, it was held that the Math in question was not a public Math, rather a private temple which had been established by the ancestors of the petitioner, of which the Mahanth had been appointed to look after the temple, the effect of the same would be that the land in question would be the properties of the family of the petitioner and not that of any Math per se.

So far as the reopening of the case itself on the death of the mother of the petitioner on 16.10.1983 is concerned, the same was contrary to the established legal position that the ceiling proceedings have to be considered as on the date appointed under the Act and would not depend upon any subsequent developments on account of death or birth.

Thus, both on the basis of the materials which were in existence before the Ceiling Authorities up to the revisional stage and further considering the subsequent judgment and decree dated 2002 in Tile Suit No.317 of 1982 of the Civil Court, this Court is of the view that the impugned orders dated 9.3.1996, 30.5.1995 and 22.6.1992 are contrary to law and based upon wrong assumption of fact. They are, therefore, quashed.

The writ application is, accordingly, allowed.

**(Ramesh Kumar Datta, J)**

V.P.Sinha/-

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