

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1028 of 2005

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1. Deshratna Dr.Rajendra Prasad Dugdhutpadak Sahkari Sangh Ltd., Barauni, Dairy through its Managing Director, P.S.Barauni, District Begusarai
 2. Shri Bhim Shankar Manbansh, I.A.S. son of Late Sri Radhe Bihari Lall, Managing Director, Deshratna Dr.Rajendra Prasad Dugdh Utpadak Sahkari Sangh Ltd., Barauni Dairy, P.S.Barauni, District Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Begusarai
3. The Additional Collector, Begusarai
4. The Deputy Collector, Land Reforms, Teghra, P.S.Teghra, District Begusarai
5. The Circle Officer, Teghra, P.S.Teghra, District Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha, Advocate
Mr. Chetan Kumar, Advocate
Mr.Bijay Kumar Singh, Advocate
For the Respondent/s : Mr. Prabhat Kumar Singh, SC 12
Mr.Pramod Kumar Singh, AC to SC 12

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 08-01-2016

Heard the parties.

2. The petitioners are aggrieved by the order dated 30.08.2001 passed in Case No. 66 of 2000-01/63 of 2001-02 by the respondent DCLR, Teghra, Begusarai, as contained in Annexure-3 to the writ petition, whereby in exercise of his powers under Section 23 (4) of The Bihar Tenancy Act, 1885 (in short, "the B.T.Act") commercial rent/tax has been imposed upon the petitioners for the period 1998-99 with respect to the lands in question mentioned in the aforesaid order. The petitioners have also challenged the consequential notices as contained in Annexures- 4 and 5 issued by the respondent DCLR, Teghra and respondent Anchal Adhikari, Teghra respectively, whereby the petitioners were asked to deposit the commercial rent mentioned in the notices, failing which a

proceeding shall be started for recovery of the aforesaid commercial rent by initiating a certificate proceeding.

3. This matter was earlier heard by a Bench of this Court on 05.04.2005 and this case was directed to be listed after disposal of CWJC No. 1669 of 1998, as the vires of Section 23 (4) of the B.T.Act was under Consideration in the aforesaid writ petition and its analogous matters.

4. Learned counsel appearing on behalf of the petitioners as also the learned State counsel appearing on behalf of the respondents are unanimous in their submissions that the vires of Section 23 (4) of the B.T.Act and the Rules made thereunder was considered and finally decided by a Division Bench of this Court in the case of **Amar Singh and others Vrs. The State of Bihar and others**, since reported in **2007 (3) PLJR 225**.

5. The main judgment of the aforesaid Division Bench was handed down by Hon'ble Shiva Kirti Singh, J. (as His Lordship then was, before His elevation to the Apex Court) after discussing the entire schemes/scopes of Section 23 (4) of the B.T.Act and the Rules made thereunder as also the historical background of the lands besides the constitutional mandates. The conclusion was recorded in paragraph 42 of the aforesaid judgment, which reads as follows:

“42. As a result of the aforesaid discussions it is held as follows:

(i) The impugned provisions are within the legal competence of the State Legislature.

(ii) Although described as rent, the impugned levy is in fact, a tax on land covered by Entry 49 of List II of the 7th Schedule to the Constitution.

(iii) The impugned tax on land is discriminatory because it is imposed only on a class of land owners i.e. raiyats with occupancy rights covered by Chapter V of the Act and not to other class of land holders covered by Chapters III, IV, VI and VII of the Act.

(iv) The denial to the occupancy raiyats the right

to use their land in any manner of their choice is arbitrary, unreasonable and against Article 14 and 19 (1) (g) of the Constitution.

(v) The words - “to the extent of 5 per cent” in first proviso to sub-section (4) of Section 23 of the Act is bad in law on account of excessive delegation and abdication of legislative function by the legislature.

(vi) Rule 4 of the Rules is bad in law for excluding other permissible modes to determine the real market value of the land which is likely to result in unfair and unjust levy of rent/tax.

(vii) The proviso to Rule 5 is ultra vires the first proviso to Section 23 (4) of the Act.

6. However, a separate judgment, though broadly concurring, was handed down by the then Hon’ble the Chief Justice Dr.J.N.Bhatt and after discussing all the aspects of the matter His Lordship recorded his conclusion in paragraph 92, wherein he came to the conclusion that the benefit of this judgment shall be available only in pending cases. Hon’ble Mr.Justice Shiva Kirti Singh, who had authored the main judgment, also agreed with the observations of the then Hon’ble the Chief Justice. For better appreciation, paragraph 92 is re-produced hereinbelow:

“92. It is always open for the Constitutional Court under Article 226 of the Constitution to limit the relief in the light of the facts and circumstances and backdrop of the legal profile. It is in this context, the benefit of this judgment shall be available, only, in the pending cases. Thus, the relief shall be circumscribed. In other words, cases which have attained finality shall not be reopened due to the effect or operation of this judgment.

Shiva Kirti Singh, J.- I agree with the observation and direction that benefit of this judgment shall be available only in the pending cases.”

7. From the reading of the aforesaid judgment, the concluding part of which have been re-produced hereinabove , it is apparent that the proviso to Rule 5 of the Rules were declared ultra vires to the first proviso to Section 23 (4) of the B.T.Act, but the benefit of that judgment was made available only in pending cases, before the authorities concerned.

8. So far as the present matter is concerned, final order was passed much earlier on 30.08.2001 (Annexure-3) by the respondent DCLR, Teghra, Begusarai, and on the date of judgment by the Division Bench the proceeding had already been concluded. Therefore, the benefit of the aforesaid Division Bench judgment shall not be available to the petitioners.

9. In above view of the matter, in the light of the aforesaid Division Bench judgment, which has a binding precedent, this Court is left with no option but to dismiss the present writ petition. It is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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