IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3590 of 2017

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1. Radha Nath Jha Son of late late Jaganath jha, Resident of Village-Sarisaw Pahi, P.S.-Pandaul, District-madhubani.
2. Shambhu Nath Jha Son of late Jagarnath Jha, Resident of Village-Sarisaw Pahi, P.S.-Pandaul, District-Madhubani.
3. Sarita D/o of Late Jagarnath jha and Wife of Sri Chandradhar Jha, 15/E Denbi Road, Darbhanga, Bihar
4. Sujata Devi D/o of Late Jagarnath jha and Wife of Sri Suresh Jha, Village-Maharail, P.S.-Rudrapur, Dist.-Madhubani
5. Raj Thakur D/o of Late Jagarnath jha and Wife of Sri Suresh Jha, Village-Rajgram, P.S. Pandaul, Dist-Madhubani.

.... Petitioners

Versus

1. The State of Bihar through the Collector, Madhubani
2. The Additional Member, Board of Revenue, Patna,
3. The D.C.L.R. Sadar, Madhubani
4. The Circle Officer, Pandaul, Madhubani.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra
Ms. Tanuja Mishra

For the Respondent/s : Mr. Rakesh Kr. Shrivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 10-05-2018

Heard both sides.

The petitioners have filed this writ petition to quash the order dated 10.01.2017 passed by Additional Member, Board of Revenue, in Revision (Land Ceiling Surplus) Case No.02/2014.

It is admitted fact of both sides that Land Ceiling Case No.50/73-74/2/86-87 was started against the original land owner namely Jaganath Jha under the provision of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter referred to as 'the Act'. The Draft Publication was issued. The petitioners filed objection and the same was also dismissed under Section 10(3) of the Ceiling Act. Jaganath Jha preferred Land Ceiling Appeal. During the pendency of the appeal, gadget publication under Section 15 of the Land Ceiling Act for acquiring the surplus land of the land holder was issued. Jaganath Jha (now dead), being the land holder filed objection under Section 10(3) of the Land Ceiling Act. He took grounds that the land holder is entitled to get one additional unit on the ground that on 09.09.1970 his mother Smt. Kameshwari Bawasin was alive. Besides this ground, the land holder also filed objection for grant of one unit to his son namely Radha Nath Jha, the petitioner no.1, who was major on 09.09.1970, besides excluding the lands gifted to his daughter Smt. Vidya Dai from the land ceiling proceeding. The D.C.L.R. vide his order dated 25.04.1994 (Annexure-4) rejected all the objections of the land holder Late Jaganath Jha including Objection No.8, by which, he claimed one additional unit in the name of his mother Smt. Kameshwari Bawasin on the ground that she was alive on 09.09.1970 but the D.C.L.R. vide Annexure-4 rejected the claim of the land holder on the ground that Smt. Kameshwari Bawasin was not alive on the date of the order. The same order was confirmed by the appellate authority as well as revisional authority. The petitioners preferred C.W.J.C. No.14272/2002 and a

Bench of this Court vide order dated 07.08.2013 passed in C.W.J.C. No.14272/2002 (Annexure-9) remitted the matter to the court of Member Board of the Revenue by setting aside the order dated 23.08.2002 passed in Board Case No.50 of 2001. Upon such remand, the Additional Member, Board of Revenue, in Revision Surplus Case No.02/2014 negative the claim of the petitioners on the ground that the petitioners failed to produce any cogent and reliable evidence with regard to the fact that his mother Smt. Kameshwari Bawasin was alive on 09.09.1970.

Learned counsel for the petitioners submits that while this court was remanding the case, recorded finding in para-12 of the judgment and order dated 07.08.2013 passed in C.W.J.C. No.14272/2002 "*there does not appear to be any dispute that on 09.09.1970, mother of the petitioner was alive. There also does not appear to be any dispute that mother of the petitioner was a member of joint family and no partition by metes and bounds had taken place between the petitioner and his mother. There is nothing on the record to show that separate Land Ceiling Proceeding was started against the mother of the petitioner with respect to the lands held by her. If that be the position, the mother of the petitioner, being member of joint family and being raiyat with respect to the lands under her share, as also being alive on 09.09.1970, was certainly entitled to* *have a separate unit in the aforesaid land ceiling case. But this aspect has not been properly considered by the authorities concerned including the revisional authority*."

It is further submitted that the Additional Member, Board of Revenue has recorded the objection raised by the petitioners before him and categorized the same A, B regarding one additional unit on behalf of the petitioners' mother. The learned Additional Member, Board of Revenue, asked the petitioners to file evidence with regard to the death of Smt. Kameshwari Bawasin. The petitioners in pursuance thereof filed Death Certificate of Smt. Kameshwari Bawasin issued by Sarpanch but the Additional Member has rejected the certificate on the ground that the same was issued after 45 years of death of Smt. Kameshwari Bawasin. It is further submitted that the Additional Member has come to a finding that the petitioners did not claim for separate unit of his mother in the court below i.e. either before the D.C.L.R. or before the Collector in Appeal. It is submitted that the Additional Member has committed error of records. From perusal of the order dated 25.04.1994 passed by the D.C.L.R. in Land Ceiling Case No.50 of 1973-74/2 of 1986-87, the petitioners took Objection No.8 on 09.09.1970 when the mother of the land holder namely Smt. Kameshwari Bawasin was alive and the land lord is entitled to get one additional unit for his mother but the D.C.L.R.

rejected the claim of the petitioners on the ground that the mother of the land lord was not alive in the year 1994 when the order was passed and this finding was affirmed by the appellate court as well as the revisional court, which includes Additional Member, Board of Revenue against which the petitioners preferred C.W.J.C. No.14272/2002. This court has recorded its finding in para-12 but even then the Additional Member negatives the claim of the petitioner for one additional unit on the ground that his mother was alive on 09.09.1970. It is further submitted that in view of the provision as contained under Section 5 of the Land Ceiling Act, the family constitutes all major member on 09.09.1970 and each and every major members of a family is entitled to get one unit. If any major member of a family was alive on 09.09.1970 and he or she dies thereafter the major member cannot be denied unit on the ground that on the date of proceeding the major member was not alive.

On the other hand, learned counsel for the State although supports the finding of the learned Additional Member but when his attention was drawn to the order of the D.C.L.R. which shows that the petitioner raised Objection No.8 and claimed one additional unit for his mother who was alive on 09.09.1970. Learned counsel for the State very rightly drew my attention to Page No.27, Sub Para-D of the order impugned, in which, the Additional Member has also recorded finding that the question of grant of unit shall be decided with reference to the appointed date i.e. 09.09.1970 and if a member is alive on 09.09.1970, he or she is entitled to get unit and the same cannot be denied on the fact that on the date of passing of the order under the Ceiling Case, such member was not alive but it appears that the learned Additional Member has exceeded his jurisdiction although the State never raised any objection during the Ceiling proceeding about the fact that the mother of Jaganath Jha, the original land lord was alive on 09.09.1970. Since this matter was not disputed, this court in para-12 of the order dated 07.08.2013 passed in C.W.J.C. No.14272/2002 has held that there appears no dispute with regard to the fact that on 09.09.1970, the mother of the land owner was alive. This court has already recorded the finding on the basis of admitted fact. Therefore, I find that the Additional Member, Board of Revenue, has exceeded his jurisdiction by asking the land owner to give additional evidence about the death of his mother. When the land owner produced the death certificate issued by the competent authority, the Additional Member rejected the same on the ground that the death certificate was issued only after 45 years of death of the deceased. This cannot be a ground for disbelieving the documentary evidence issued by a competent authority. In the country side, the people do not usually get death certificate or birth certificate immediately after the death or birth in a family. The death of the mother of the original land owner never remained in dispute even after institution of Ceiling case. Therefore, I find that the Additional Member has illegally rejected the claim of the petitioner for grant of additional unit to mother of Jaganath Jha, the original land owner, who was alive on 09.09.1970.

Accordingly, the order dated 10.01.2017 passed by Additional Member, Board of Revenue, in Revision (Land Ceiling Surplus) Case No.02/2014 is set aside. The mother of the petitioner is also entitled to get one additional unit.

This writ petition is allowed accordingly.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2018
Transmission Date	NA