

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6462 of 1995

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Harishankar Tiwari, S/o Late Ramanand Tiwari, resident of Chandraha, Rupwalia,
P.S. Bagaha, District-West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Collector, West Champaran, Bettiah
4. The Additional Collector(Ceiling), West Champaran, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. NARMADESHWAR JHA
Mr. Harendra Prasad Sinha

For the Respondent/s : Mr. J.RAHMAN (SC)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 19-04-2018

1. The petitioner has filed this writ petition to quash the resolution dated 22.03.1995 passed in Case No.117 of 1993 by which the Additional Member, Board of Revenue dismissed the revision petition confirming the order dated 07.03.1993 passed in Ceiling Appeal No.40 of 1992-93 by the Collector, West Champaran, Bettiah and the order dated 04.06.1992 passed in Land Ceiling Case No.19 of 1975 passed by the Additional Collector(Ceiling), West Champaran, Bettiah by which the Additional Collector, West Chamapran, Bettiah granted three units only and also did not make proper classification of the land nor allowed the petitioner to exercise option to choose the lands.

2. The facts in brief is that a Land Ceiling Case No.19 of



1975 was initiated against Ramanand Tiwari who died in the year 1986 leaving behind his two sons namely Vishwanath Tiwari(now deceased) and Harishankar Tiwari(the petitioner), widow, Sukhrani Devi and two daughters, Durgawati Devi and Kusum Devi. A draft publication was issued showing 149.285 acres of land owned by Ramanand Tiwari and Ramanand Tiwari was granted four units. 39.33 acres of land was shown surplus. Ramanand Tiwari died in the year 1986 and his eldest son, Vishwanath Tiwari also died in the year 1987 leaving behind his widow, Surya Kumari Devi and three sons, namely Sarbdaman Tiwari, Shatrughan Tiwari and Chandra Shekhar Tiwari and two daughters. Consequently, Harishankar Tiwari, the younger son was substituted as landlord. The objection petition was filed and the landlord demanded one more unit for Shatrughan Tiwari as he was major on 09.09.1970. It is also claimed that 2.98 acres land was orally dedicated to deity, Ramjanki much before 1959 and temple is still in existence. The classification of land was also objected and stated that most of the lands are situated in riverin belt and are subject to alluvion and deluvion during the rainy season. The voter list of 1971, medical certificate, admission register of school and affidavit of father of Shatrughan Tiwari was filed. The Additional Collector rejected the objection of the landlord and the appeal filed by the landlord was also dismissed by the Collector. The landlord preferred Revision No.117



of 1993 before the Additional Member, Board of Revenue who remitted the case with a direction to consider the case of the landlord afresh with regard to classification and for grant of units on the basis of the evidence available on record. In the draft notification, four units were granted whereas the petitioner claimed four units one for the father, Late Ramanand Tiwari and two for Vishwanath Tiwari and Harishankar Tiwari, the petitioner, two sons of Ramanand Tiwari and one unit to Sarbdaman Tiwari, the eldest son of Vishwanath Tiwari. When the landlord claimed 5th unit for Shatrughan Tiwari on the basis of his majority on 09.09.1970, the authority granted only three units and also made classification of lands in a strange manner and declared 98.79 acres of land as surplus. Even after remand, the Additional Collector without considering evidence on record granted only three units and ordered for final publication vide order dated 04.06.1992. The Collector as well as Additional Member, Board of Revenue dismissed the appeal of the petitioner vide order dated 07.03.1993 passed in Ceiling Appeal No.40 of 1992-93 and resolution dated 22.03.1995 passed in Case No.117 of 1993 respectively.

3. The learned counsel for the petitioner submits that the ceiling authority vide order dated 28.06.1976 granted four units and rejected to grant 5th unit to Shatrughan Tiwari on mere surmises that he could not be major on 09.09.1970. Besides that 3/10th unit was



granted to the minor son of Harishankar Tiwari. Again the Additional Collector vide his order dated 12.09.1983 granted five units to five adult members and 2/10th units to the minors but when the final order was passed on 10.07.1985 without giving any reason only three units for major and 2/10th units for the minor were granted. Against the aforesaid order, the petitioner filed Land Ceiling Appeal No.64 of 1985 before the Collector but the Collector also dismissed the appeal. The petitioner-landlord filed ceiling revision before the Additional Member, Board of Revenue in Ceiling Revision Case No.87 of 1986 and by order dated 22.01.1987, the Additional Member, Board of Revenue remitted the matter to the Collector to consider the evidence of the petitioner with regard to grant of unit to Sarbdaman Tiwari and Shatrughan Tiwari and also reconsider the case of the petitioner with regard to classification of land. Upon remand of the case, the Additional Collector by Annexure 4 without looking into the evidence in its proper prospective rejected the claim of the petitioner for grant of two units for Sarbdaman Tiwari and Shatrughan Tiwari. In the entire order, the Additional Collector has considered the evidence produced on behalf of the petitioner with regard to majority of Shatrughan Tiwari but the Additional Collector disbelieved the school admission certificate, medical certificate issued by two doctors and the voter list of Shatrughan Tiwari showing that Shatrughan Tiwari



was major and aged about 20 years on 09.09.1970. The Additional Collector disbelieved the evidence of the doctor on the ground that the medical certificate issued by two doctors discloses different age of the petitioner and also disbelieved the school admission register on the sole ground that the same was not issued by the District Education Officer. It is submitted that the ground for rejection was not at all tenable. The doctor on the basis of the ossification test can assess the age of the person and on the basis of ossification test approximate age of the person can be given. The ossification test cannot give the exact age of a person. The report of the doctor shows that the Shatrughan Tiwari was major on 09.09.1970. The certificate issued by the school headmaster also shows that the date of birth of Shatrughan Tiwari was 1950 and accordingly he was major on 09.09.1970. The majority of Sarbdaman Tiwari has not been questioned anytime by the respondent authority and no plausible reason whatsoever may be given for refusing unit to Sarbdaman Tiwari. Even the respondents have granted four units and later on granted five units to the land holder on the basis of their majority in the name of Ramanand Tiwari, Vishwanath Tiwari, Harishankar Tiwari and two major sons of Vishwanath Tiwari namely Sarbdaman Tiwari and Shatrughan Tiwari and 2/10th unit for minor members of the family but without any reason only three units was granted by the final order, therefore, the order suffers from



illegality and the same order has been confirmed by the appellate as well as revisional authority.

4. The learned counsel for the State-respondent however filed counter-affidavit and submitted that it is admitted fact that on 04.07.1977 at the time of draft publication, four units for adult and 1/10th unit for minor was allowed for the family of the landlord. The land holder filed objection on 27.10.1977 in which he also claimed one unit for Shatrughan Tiwari. In support of majority of Shatrughan Tiwari, the land holder filed affidavit, school leaving certificate of Shatrughan Tiwari and the medical certificate but those documents were disbelieved and it was finally found that Shatrughan Tiwari was minor but the respondent did not give any reply with regard to the majority of Sarbdaman Tiwari and deduction of one unit from four units to three units.

5. The sole question arises for consideration in this case as to “whether the authority has considered the evidence available on record in its proper prospective and legally rejected the claim of the land holder for grant of two units for Sarbdaman Tiwari and Shatrughan Tiwari?”

6. From perusal of the records which was called for vide order dated 02.07.1953 on the basis of the submissions that initially four units one to the land holder namely Ramanand Tiwari, two for



his sons, Vishwanath Tiwari and Harishankar Tiwari and one for grandson namely, Sarbdaman Tiwari was granted in the first draft notification. After the ordinance bringing about an amendment in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land), Act in the year 1982, the fresh proceeding under Section 32B of the Act was initiated and fresh draft publication was made. The land holder claimed five units. The 5th unit was claimed for another grandson namely Shatrughan Tiwari, son of Vishwanath Tiwari but in the final draft notification, the authority only granted three units one to the landlord and two to his son namely, Vishwanath Tiwari(deceased) and Harishankar Tiwari(petitioner). From perusal of the records and order dated 28.06.1976, the Additional Collector granted four units to the land holder, his two sons and one grandson, although no unit was granted to Shatrughan Tiwari on the ground that he could not be 18 years old on 09.09.1970 although the landlord gave evidence that Shatrughan Tiwari was 20 years on the date of objection. The authority seem to have rejected the claim of the landlord only on the ground that the land holder did not disclose the age of Shatrughan Tiwari at the time of filing the objection and Shatrughan Tiwari was not married, therefore, he cannot be major on 09.09.1970. Again vide order dated 12.09.1983, after initiation of fresh proceeding under Section 13(b) of the Land Ceiling Act, the



Additional Collector granted five units to all five major members of the family namely Ramanand Tiwari, the landlord, his two sons, Vishwanath Tiwari and Harishankar Tiwari and two sons namely, Sarbdaman Tiwari and Shatrughan Tiwari and 2/10th unit was granted to the minor children but in the final publication without any cogent reason, the landlord was granted only two units and no separate unit was granted to Sarbdaman Tiwari and Shatrughan Tiwari even on remand by the Revisional authority on 22.01.1987, the Additional Collector did not whisper about the majority of Sarbdaman Tiwari which was never in controversy and the ceiling authority granted 4th unit to Sarbdaman Tiwari, the grandson of original landlord, Ramanand Tiwari considering him major on 09.09.1970 and his majority was never in dispute but the respondent authority without assigning any reason did not grant unit to Sarbdaman Tiwari. It further transpires that landlord also claimed 5th unit for Shatrughan Tiwari and filed school admission register, the certificate issued by the two doctors at two different dates and years, voter list of 1971. The school admission register shows that the date of birth of Shatrughan Tiwari was in the year 1950. The voter list also shows that Shatrughan Tiwari was 21 years in the year 1971. One certificate of the doctor shows that Shatrughan Tiwari was 21 years on 09.09.1970 but according to the calculation on the basis of the second certificate



issued by the doctor age of Shatrughan Tiwari assessed to be 20 years on 09.09.1970 and on this ground, the Additional Collector rejected the claim of majority of Shatrughan Tiwari. I find that the reason for rejection of the majority of Shatrughan Tiwari is based on surmises and not on evidence available on record. There is no material to show that Shatrughan Tiwari was minor. The authority did not even ask Shatrughan Tiwari for ossification test. The school admission register was disbelieved only because the same was not issued under the signature of D.E.O. and the landlord did not file matriculation certificate. If a person get admission in a school, the certificate issued by the concerned Headmaster is admissible and merely because Shatrughan Tiwari did not appear on the matriculation examination and, therefore, he could not produce the matriculation certificate. The certificate issued by the Headmaster showing the date of birth of Shatrughan Tiwari at the time of his admission is worth reliable evidence and the same should not have been rejected and, therefore, I find that the order of the Additional Collector rejecting the claim for two additional units in the name of Shatrughan Tiwari and Sarbdaman Tiwari is illegal and consequently the orders (Annexure 5 and 6) passed in appeal and revision confirming the order of the Additional Collector(Annexure 4) are also not sustainable.

7. In the result, the writ petition is allowed. The order



dated 22.03.1995 passed in Case No.117 of 1993 by Additional Member, Board of Revenue, order dated 07.03.1993 passed in Ceiling Appeal No.40 of 1992-93 by the Collector, West Champaran, Bettiah and also the order dated 04.06.1992 passed in Land Ceiling Case No.19 of 1975 by the Additional Collector(Ceiling), West Champaran, Bettiah are set aside. The land holder is entitled to get five units and also he is entitled to exercise his option. Accordingly, the notification issued under Section 11(i) is set aside and the matter is remitted to the Additional Collector. The Additional Collector is directed to proceed further to dispose of ceiling case in accordance with law after granting five units to the land holder.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.07.2018
Transmission Date	

