

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
SHRI K.M. ZUBERI & ORS.

DATE OF JUDGMENT: 09/02/1996

BENCH:
G.B. PATTANAIK (J)
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G.B. PATTANAIK (J)
RAMASWAMY, K.
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 1496 JT 1996 (2) 368
1996 SCALE (2)182

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

This appeal by the State of Bihar raises the question whether major sons of a family governed by Mohammedan law are entitled to a separate unit while determining the ceiling area of a ceiling surplus holder? In the ceiling fixation case of a land holder Aftab Ahmed, the Member, Board of Revenue came to the conclusion that an adult son of a land holder governed by Mohammedan law would be entitled to a separate unit since an adult son of a land holder governed by the Mitakshara School of Hindu Law is entitled to the same. The State of Bihar challenged the said decision in Patna High Court by filing a Writ Petition and when the matter came up before a Division Bench, in view of the significance of the matter the Division Bench referred the matter to a larger Bench and the case was heard by five judges of the Court. The majority view was expressed by Chief Justice Sandhawalia, as he then was, and the minority views were those of Justice H.L.Agrawal, as he then was, and Justice L.M. Sharma, as he then was. Three questions were formulated by the Court, those questions being:

"1. Whether the personal law applicable to the family has to be taken into consideration for the determination of its holding under the Bihar Land Reforms (Fixation of ceiling Area and Acquisition of Surplus Land) Act, 1961. despite the insertion of clause (ee) and Explanation II thereto in section 2 of the said Act?

2. If the major sons of a family governed by the Mitakshara School of Hindu Law are entitled to a

separate unit under the said Act then would a major son of a family governed by Mohammadan Law be debarred therefrom?

3. Whether the Full Bench in *Amamul Hasan Choudhary vs, State of Bihar & Others* (1982 BBCJ 208) lays down the law correctly on the aforesaid points?

The short facts are that the land holder Aftab Ahmed was shown to be holding 50.02 acres in the draft statement. The said land-holder filed an objection claiming that he is entitled to one additional unit for his adult son. This was rejected by the Additional Sub-divisional Officer. He determined 11.12 acres to be the surplus. The land holder appealed to the Collector but the appeal was dismissed for default. The land holder carried the matter in revision to the Board of Revenue. The Member, Board of Revenue took into consideration the Amendments to the Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus land) Act, 1961 (Bihar Act 22 of 1962) (hereinafter referred to as 'The Act') made under Act 1 of 73 and Act 72 of 76 and came to the conclusion that personal law of the land holder is not required to be taken into consideration for determination of the holdings. He further held that since the adult son of a land holder governed by the Mitakshara Law is entitled to a separate unit the decision should be identical with regard to the land holder governed by Mohammedan law. Accordingly he allowed the revision and called upon the authorities to re-determine the ceiling. The State of Bihar being aggrieved by the same filed Writ Petition in the Patna High Court. The learned Chief Justice who spoke for the majority on an analysis of the different provisions of the Act as well as the tracing history of the legislation and the amendments made thereto came to the conclusion that in the ceiling law the statutory "family" as defined in the Act has wholly submerged the ceiling of the land holder and such concept of 'family' is entirely secular in character and has universal application irrespective of religion, faith or the personal law applicable to individual members. He further held that despite definition of the statutory "family" and its secular nature excluding personal laws, to still bring in the concept of the Mohammedan family or Christian family or Mitakshara family for the purposes of the act, is basically fallacious and would run against the gamut of ceiling legislation. The learned Chief Justice accordingly answered the question no.1 in the following words:

"It is held that the personal law applicable to the family is not to be taken into consideration for the determination of its holding under the Bihar land reforms (Fixation of ceiling Area and Acquisition of Surplus Land) Act 1961. "

So far as second question is concerned the learned Chief Justice answered as follows:-

"The answer to question no. 2 is rendered in the negative and it held that if the major sons of a family governed by the Mitakshara school of Hindu laws are entitled to a separate unit under the Act then the major sons of a family governed by Mohammedan Law are

entitled to the same."

As a necessary consequence the third question was answered in the negative and the decision of the Court in Imamul Hasan Choudhary vs. State of Bihar and otherwise overruled.

Aggarwal, J. did not agree with the answer given to the second question by the learned Chief Justice and then advertg to the provisions of the Mitakshara law and how a minor male child of a Mitakshara coparcenery acquires interest in the property by his birth and is entitled to a share and how the position of a Mohammedan son is entirely different came to the conclusion that the earlier decision of the Patna High Court in Imamul Hasan Choudhary's case has laid down the law correctly and, therefore, the adult son of a Mohammedan land holder would not be entitled to separate unit. Sharma J, also differed from the majority view expressed by the Chief justice and agreed with the conclusion of Agrawal, J. but on different ground. The learned Judge held that a land holder whether an individual or a family within the meaning of the Act belonging to any religion, faith or group cannot claim additional land for his ceiling area on the ground of a major son. In other words according to Sharma J, the Act nowhere conferred an additional unit on the major son of a land holder belonging to Mitakshara School of Law, and if he gets a separate unit it is on account of his own.

Mr. Pramod Swarup, learned counsel appearing for the appellant, contended that under the Act there is no provision which confers additional unit in case of a land holder governed by Mitakshara School of Hindu Law on the adult son and, therefore, the majority view expressed by Chief Justice is vitiated on account of such erroneous approach and the ultimate conclusion that the adult son of a Mohammedan land-holder would be entitled to additional unit is unsustainable in law. Mr. Raju Ramachandran, learned counsel appearing for the respondents, on the other hand, contended that if the adult son of a land holder governed by Mitakshara School of Hindu Law is entitled to an additional unit there is no justification in denying the same to the adult son of a land holder governed by the Mohammedan law and therefore, the majority view is wholly justified. It is to be noted that so far as the answer to the first question is concerned, there is no dispute between the parties and, in our view rightly since the statutory definition of "family" in Section 2 (ee) does not conceive of any personal law applicable to the said family and, therefore, no personal law can be taken into consideration for determination of the ceiling surplus with the land holder under the Act. In order to rest the correctness of the majority view, so far as the second question is concerned, it would be appropriate for us to examine the relevant provisions of the Act. Section 2 (aaa) defines "ceiling area" to mean the area of land fixed under Section 4 as the ceiling area.

"Family" in Section 2 (ee) is defined thus:

"2(ee) 'Family' means and includes a person, his or her spouse and minor childres;

Explanation I. In this clause the word "person" includes any company, institution, trust, association. or body of individuals whether incorporated or not.

Explanation II The personal law shall not be relevant or be taken into consideration in

determining the composition of the family for the purposes of the Act"

"Land holder" has been defined in Section 2(g) thus:-

"2(g) 'land holder' means a family as defined in clause (ee) holding land as raiyat or as under-raiyat or a mortgagee of land in possession or holding land permanently settled by Government or lessee of land not resumable by Government".

"Raiyat" has been defined in Section 2(k) thus:

"Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners, and includes also the successors-in interest- or persons who have acquired such a right and includes, in the district of Santhal Parganas, a village headman in respect of his private land, if any but does not include in the area to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of 1908) applies, a Mundari Khunt-Katidar or a bhuihar".

Section 3 of the Act gives the provisions of the Act an overriding effect over all other law in force. Section 4 fixes the ceiling area. The said Act is quoted below in extenso:

"4. Fixation of ceiling area of land. On the appointed day, the following shall be the ceiling area land for one family consisting of not more than five members for the purposes of this Act.

(a) Fifteen acres, that is, equivalent to 6.0705 hectares of land irrigated or capable of being irrigated by flow irrigation work or tube-wells or lift irrigation which are constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law and which provide or are capable of providing water for more than one season (hereinafter referred to as class I land)

Explanation.-- A land shall not be regarded as Class I land unless it is capable of growing at least two crops in a year; or

(b) eighteen acres, equivalent to 7.2846 hectares of land irrigated by such private lift irrigation or private tube-well as are operated by electric or diesel power, and provide or are capable of providing water for more than

one season (hereinafter referred to as class I land ;
Explanation.-- Private lift irrigation or private tube-wells means those which are not constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law; or

(c) twenty-five acres, equivalent to 10.1175 hectares of land, irrigated or capable of being irrigated by works which provide or are capable of providing water for only one season (hereinafter referred to as class III land);

(d) thirty acres, equivalent to 12.141 hectares of land other than those referred to in clauses (a)(b)(c)(e) and (f) or land which is an orchard or used for any other horticultural purpose (hereinafter referred to as class IV land); or

(e) thirty-seven and a half acres, equivalent to 15.368 hectares of Diara land, or Chaur (hereinafter referred to as class V land); or

(f) forty-five acres equivalent to 18.211 hectares of hilly, sandy, forest land, even land perennially submerged under water or other kind of land none of which yields paddy, rabi or cash crops (hereinafter referred to as class VI land)"

Section 5 puts an embargo for any 'family' to hold land in excess of the ceiling area except provided under the Act.

"5. No person to hold land in excess of the ceiling area.--(1)(i) It shall not be lawful for any family to hold, except otherwise provided under this Act, land in excess of the ceiling area.

Explanation.-- All lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family.

(ii) No land holder holding land in excess of the ceiling area shall from the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 and till the publication of notification under Section 15, transfer any land held by him except with the previous permission in writing of the Collector, who may refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the

transfer is proposed to be made with a mala fide intention of defeating the object of this Act:

Provided that the transfer of any land made, with the previous permission of the Collector, shall be deemed to have been made from within the ceiling area admissible to the land-holder:

Provided also that the transfer of any land beyond the ceiling area admissible to the land-holder shall be deemed to have been made with the object of defeating the provisions of the Act.

(iii) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority, the Collector shall have power to make enquiries in respect of any transfer of land by a land-holder whether by a registered instrument or otherwise made after the 22nd day of October 1959 and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this section.

(iv) Land donated by a land-holder under the Bihar Bhoodan Yagna Act, 1954 (Bihar Act XXII of 1954), to the extent it subsequently vests in the Bhoodan Yagna Committee under the said Act before the date of the final publication of draft statement under Section 11 of this Act, shall not be taken into account in determining the area he may retain under this section."

Explanation to Section 5(1) connotes that the land owned or held individually by the members of the family or jointly shall be deemed to be held or owned by the 'family'.

Section 6 provides for issuance of the public notice calling upon the land-holders of the State who hold land in excess of the ceiling area to submit a return to the Collector of the District where they originally reside indicating the particulars as mentioned therein.

Section 7 authorizes the Collector to obtain necessary information if a ceiling surplus holder fails to submit return under Section 6 with regard to area held by such surplus holder.

Section 10 is the provision for preparation of a draft

statement on the basis of information received from the land-holder.

Section 11 provides for publication of the draft statement after disposing all the claims or objections preferred by the land-holder.

Section 15 confers power on the State Government and the Collector of the District to acquire surplus land in the hands of the surplus holder. We are not concerned with the other provisions of the Act for adjudicating the point in issue.

An analysis of the aforesaid provisions unequivocally indicate that under the Act the ceiling area is required to be determined of a "family" as defined in Section 2(ee) and, therefore, the land-holder of whose ceiling is going to be determined may be either a person, his or her spouse, and minor children. A major child whether belonging to a Hindu family or a Mohammedan or Christian is not conceived of getting an additional unit while determining the ceiling area of a land holder. A major son of a Hindu can get an independent ceiling determined provided he is raiyat within the meaning of Section 2(k) and has become a land-holder within the ambit of Section 2 (g) but not as a successor to the land-holder whose ceiling is being determined on the ground that he has a right in the property by virtue of birth. In other words, under the Act no distinction has been maintained between Hindu, Mohammedan, Christian for determination of the ceiling area in the hands of the land-holder. The majority view expressed by Chief Justice as well as by Justice Agrawal approached the problem on incorrect premise as if under the Act the adult son of a land-holder governed by Mitakshara School of Hindu Law has been given an additional unit. Minority view of Justice L.M. Sharma is wholly correct one. The ultimate conclusion, as expressed by the majority judgment, in answering question no. 2 is, therefore, unsustainable in law. In our considered opinion, under the Act while determining the ceiling area in the hands of a land-holder whether governed by Mitakshara law or governed by Mohammedan law no additional unit is given to an adult son of the land-holder and, therefore, the earlier view expressed by Patna High Court in Imamul Hassan Choudhrys 'case reported in 1982 (Vol.30) Bihar Law Journal Reports p.150 lays down law correctly.

This appeal is accordingly allowed. But, in the circumstances, there will no order as to Costs.