

SIRISIA STHAL, IMLI CHATI, MUZAFFARPUR & ORS. A

v.

STATE OF BIHAR & ORS.
(Civil Appeal No.1001 of 2002)

FEBRUARY, 11 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.] B

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 – Vires of certain provisions of the Act challenged in writ petition – High Court upheld the provisions – On appeal, held: Order of High Court was without application of mind to the challenge raised – Hence matter remitted to High Court for fresh consideration. C

Appellant filed writ petition challenging vires of certain provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. High Court dismissed the writ petition. Hence the present appeal. D

Allowing the appeal and remitting the matter to High Court, the Court E

HELD: Since the High Court has not applied its mind to the challenge raised, and has erroneously referred to the 9th Schedule to the Constitution, it would be appropriate to set aside the impugned order of the High Court and remit the matter to it for fresh consideration in accordance with law. [Para 6] [685-E, F] F

CIVILAPPELLATE JURISDICTION : Civil Appeal No.1001 of 2002. G

From the Judgment and Order dated 13.03.2001 of the High Court of Judicature at Patna in C.W.J.C. No. 10233 of 1995.

S.B. Sanyal, Ranjan Mukherjee for the Appellants. H

A Saurabh Kirpal and Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

B **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by a Division Bench of the Patna High Court dismissing the writ petition filed by the appellants. The writ petition was filed challenging vires of certain provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short 'the Act'). The writ petition filed by the appellants was dismissed on the ground that no return was filed, and after preparation of draft statements they could have got opportunity to file objection. It was held that the writ petition was filed challenging vires of an enactment which was included in 9th Schedule of the Constitution of India, 1950 (in short the 'Constitution').

D 2. In support of the appeal learned counsel for the appellants submitted that since the vires of certain provision were being challenged and the amendment to Section 29 of the Act was under challenge, the question of filing return did not arise. Further it was submitted that the amendment was not included in the 9th Schedule as was observed by the High Court. Earlier, all the writ petitioners were granted exemption under Section 29(2) (a)(ii) of the Act to hold an extra unit required for the purpose of performing religious rites and its maintenance but by the amendment the same was taken away.

F 3. Learned counsel for the respondent-State on the other hand submitted that though the amendment was not part of the 9th Schedule to the Constitution, yet the effect of the amendment is that the power to exempt stood deleted with retrospective effect.

G 4. Prayers in the writ petition were to the following effect:

H "It is therefore, prayed that your Lordships may graciously be pleased to admit this application, issue Rule NISI against the respondents calling upon them to show-cause as to why the Section 2 of the impugned ordinance

(Annexure 1) and the directions contained in Annexure 2 A
be declared ultra vires of the Constitution of India and
quashed after hearing the party or parties, rule may be
made absolute;

And/or

ii) That such order, writ, direction or order may be passed B
to your Lordships as may deem fit and proper in the facts
and circumstances of the case."

5. Subsequently, the prayers were amended in the following C
terms:

"It is, therefore, prayed that the prayed portion of the writ
application be kindly permitted to be amended as followed
in the light of the facts stated above:-

"That after first prayer in the writ petition, the following be D
added:-

RULE NISI be also issued against the respondents calling
upon them to show cause as to why Section 2 of the
impugned Bihar Act 8 of 1997 (Annexure 3 and the
directions contained in para 5 (Gha)(vi) of the Annexure 4 E
be not declared ultra vires the Constitution of India and
quashed and after hearing the parties RULE NISI be made
absolute."

6. Since the High Court has not applied its mind to the
challenge raised and has erroneously referred to the 9th F
Schedule to the Constitution, it would be appropriate to set aside
the impugned order of the High Court and remit the matter to it
for fresh consideration in accordance with law. Since the writ
petition is of the year 1995, the High Court is requested to take
up the matter early and decide the writ petition as early as G
practicable, preferably by the end of October, 2008.

7. The appeal is allowed to the extent indicated without
any order as to costs.

K.K.T.

Appeal allowed. H