

Narmadeshwar Prasad Singh and Others

Vs

State of Bihar

Civil Appeal No. 2309 (N) of 1969

(N.L. Untwalia, A.D. Koshal JJ)

11.10.1979

JUDGMENT

N. L. UNTWALIA, J. –

1. This appeal by special leave from the judgment of the Patna High Court given in a writ petition is filed by the appellants. The short question which fell to be decided in the High Court and deserves our consideration is whether the reserve Jama fixed at Rs. 5,000 per year by the Collector under the Bihar Land Reform Rules, 1951 (hereinafter referred to as "the Rules"), was valid and legal. The Jama had to be fixed in accordance with Rule 7(u) of the Rules. The question is whether it was under clause (i) or under clause (ii) that it was to be so fixed. The High Court has not clearly kept in view the distinction between the two clauses. Rule 7(u) reads as follows :

7(u) Fixation of reserve Jama. - (i) In respect of such Hat, Bazar or Mela, a reserve Jama shall be fixed by the Collector or the prescribed authority on the basis of the average of the Jama, at which such Hat, Bazar or Mela was settled during the preceding here years. In case of improvements and developments in respect of the premises of such Hat, Bazar or Mela or in the neighbourhood thereof, for which the outgoing intermediaries and/or their heirs are not responsible, and which are likely to increase the potentialities for fielding a higher Jama, such potentialities may also be taken into consideration and the reserve Jama can be suitably increased with the permission of the Commissioner.

(ii) In case of difficulty in fixing the reserve Jama on the basis of the average of the Jamas of the preceding three years, due to non-availability of figures or otherwise, the Collector or the prescribed authority shall fix the reserve Jama in his best judgment with the approval of the Commissioner of the Division.

2. Under the first part of clause (i) the reserve Jama has to be fixed by the Collector or the prescribed authority on the basis of the average of the Jama at which any Hat, Bazar or Mela was settled during the preceding three years. The second part takes into account the improvement, if any, brought about therein for which the intermediary is not responsible.

3. Under clause (ii), however, in case of difficulty in fixing the reserve Jama on the basis of the average of the Jamas of the preceding three years the Collector can fix the reserve Jama in his best judgment. The fixation under clause (ii) is subject of the Commissioner of the Division.

4. In the instant case it appears to us that the figures of the reserve Jamas for the preceding three

years were not available. The Collector, therefore, proceeded to fix it under clause (ii) of Rule 7(u) of the Rules. It was fixed at Rs. 5,000 per year and that was approved by the Commissioner also. There was no illegality in fixing the reserve Jama according to the best judgment of the Collector. The Division Bench of the High Court, thereof is correct.

5. But to the view expressed by the High Court in the judgment under appeal with reference to the provisions of Rule 7(u) is not quite correct. The High Court has committed a mistake in observing :

Without entering into details about the provisions of the Rules, it is sufficient to say that the Collector should first fix the reserved Jama either on the basis of the average Jama at which the Hat was settled during the preceding three years or to the best of his judgment subject to the approval of the Commissioner of the Division [see clauses (i) and (ii) of Rule 7(u) and then make an offer to the previous intermediary Rule 7-R].

6. The view so expressed is erroneous and we do not approve of it. The correct position of law is as we have explained above. But on the facts the decision of the High Court as it is, is correct and cannot be interfered with. For the reasons stated above, we dismiss this appeal but without costs.

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