

Madhu Kishwar and Others

Vs

State of Bihar and Others

Writ Petition Nos. 5723 of 1982 and 219 of 1986

(CJI Ranganath Misra, Kuldip Singh JJ)

11.10.1991

ORDER

1. These two petitions under Article 32 of the Constitution challenge the provisions of the Chhota Nagpur Tenancy Act which confines succession to property to the male line by contending that the provision is discriminatory against women and, therefore, ultra vires the equality clause in the Constitution. Petitioner 1 in the first writ petition is the editor of magazine while petitioners 2 and 3 are two ladies of the 'Ho' tribe, admittedly one of the Schedule Tribes residing in Singhbhum district of Bihar. The petitioners in the other writ petition belong to the 'Oraon' tribe of the Chhota Nagpur area. Challenge is essentially to Sections 7 and 8 of the Chhota Nagpur Tenancy Act of 1908. Section 7 and 8 of the Act provide :

"7. (1) Meaning of 'raiyat having khunt katti rights'. - (1) 'Raiyat' having khunt katti rights' means a raiyat in occupation of, or having any subsisting title to, land reclaimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family :

Provided that no raiyat shall be deemed to have khunt katti rights in any land unless he and all his predecessors-in-title have held such land or obtained a title thereto by virtue of inheritance from the original founders of the village.

(2) Nothing in this Act, shall prejudicially affect the rights of any person who has lawful acquired a title to a khunt kattidari tenancy before the commencement of this Act.

8. Meaning of Mundari Khunt Kattidar. - 'Mundari khunt kattidar' means a Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes -

(a) the heirs male in the male line of any such Mundari, when they are in possession of such land or have any subsisting title thereto; and

(b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants."

2. Reliance has been placed on Division Bench decision of the Patna High Court in the case of Jitmohan Singh Munda v. Ramratan Singh (1958 BLJR 373) in support of the proposition that the Patna High Court had more than 30 years back taken the view that the provision was not operative and a widow was also entitled to inherit. When analysed the judgment of the Patna High Court does not seem to provide prop for the argument raised in the writ petitions. In paragraph 4 of the judgment the High Court indicated :

"The contention based on Section 8 also terminologically cannot be accepted in the first place, in defining khunt kattidari interest. As quoted above, the word used is 'includes' Whereafter occur clauses (a) and (b) containing reference to the male in the male line of Mundari. The word 'includes' cannot be taken to be exhaustive. It only states that the heirs in the male line alone are in the category of Mundari Khunt Kattidari in the possession, but in implication it may well be that the heirs of the deceased Mundari who are females will not be entitled to succeed to it. That does not mean that the section is so definite as to exclude the inclusion of the widow of the deceased Mundari as a person who can hold the land during her lifetime. Moreover, clause (a) refers to the heirs male in the male line. Word 'line' is also significant because it evidently refers to a person who has descended from the deceased Mundari whose interest may be in question. Even, therefore, if these words 'the heirs male in the male line' were to be given exclusive meaning, then also it would mean only the persons who are descended from him or represent another male line altogether. There is no reference whatsoever to the exclusion of the widow of the particular Mundari. In my opinion, the position in respect of the interest of the widow of the deceased Mundari is the same in respect of this property as it would be here position in regard to the other properties of her late husband. Since the court below has accepted that the family has followed the Hindu rites and Hindu religion, the widows of Kartik Singh would be entitled to be in possession. Section 8, as I have discussed, is not inconsistent with this position of the widow and, as such, the court below took them correct view in holding that the plaintiff could not recover possession of the property during the lifetime of defendant 1, but he is entitled to a declaration that he will succeed after the death of the widow."

3. The interpretation given of Section 8 in the Division Bench decision, therefore, does not provide full support to the point raised before us by the writ petitioners in the two cases. It was a case confined to its own facts and the Court proceeded to dispose of the case with reference to the widow by bringing in the concept of Hindu law on the finding that the family had adopted Hindu law and was not bound by its own caste custom.

4. At an earlier stage while one of these writ petitions was heard we had given time to the State of Bihar to consider the feasibility of carrying out an amendment in the offending sections and to clearly provide that succession was not confined to the male in the male line. A committee appears to have been set up by the State of Bihar to examine this question and it has come to the conclusion that by custom prevalent among the Scheduled Tribes a female heir is excluded from succession and in case the law was otherwise interpreted or changed and property was allowed to go into the hands of female heirs, there would be great agitation and unrest in the area among the Scheduled Tribe people who have custom-based living.

5. Scheduled Tribe people are as much citizens as others and they are entitled to the benefits of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the

matter of succession to property with a view to maintaining cohesiveness in regard to Scheduled Tribes and their properties. But exclusion from inheritance would not be appropriate. Since this aspect of the matter has not been examined by the State of Bihar and the feasibility of permitting inheritance and simultaneously regulating such inheritance for the purpose of ensuring that the property does not go out of the family by way of transfer or otherwise we are of the view that in the peculiar facts of the case the State of Bihar should re-examine the matter. In these circumstances, instead of disposing of the two petitions by a final order we adjourn the hearing thereof for three months and direct the State of Bihar to immediately take into consideration our order and undertake the exercise indicated and report to the Court by way of an affidavit and along with that a copy of the report may be furnished by the Committee to be set up by the State of Bihar.

6. This matter shall not (sic now) be considered as part-heard and shall be next listed before a bench where Justice Kuldip Singh is one of the members.

</html