

SUPREME COURT OF INDIA

Sirisia Sthal, Imli Chati, Muzaffarpur

Vs.

State of Bihar

C.A.No.1001 of 2002

(Arijit Pasayat and P. Sathasivam JJ.)

11.02.2008

JUDGMENT

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 virus 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 virus of an enactment which was included in 9th Schedule of the Constitution of India, 1950 (in short the 'Constitution').

2. In support of the appeal learned counsel for the appellants submitted that since the virus 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.

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.

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

"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 be declared ultra virus 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 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 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 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 be not declared ultra virus 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 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 practicable, preferably by the end of October, 2008.

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