

A SANT SARAN GOSWAMI @ DEOJI

v

THE STATE OF BIHAR AND ORS.

JANUARY 17, 1995

B [K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

C *Bihar Land Reforms (Fixation of Land Ceiling & Acquisition) Act, 1961—Ss.2(ee) & 32-A—Several Maths under the management of one Math—Whether to be treated as subsidiary or family of Maths—Not entitled to treat its land independent from lands of controlling Math—Reopening of ceiling proceedings—Not challenged and became final and cannot be allowed to be raised.*

D Appellant constituting Baletha Math was in possession of 15.36 acres of land Proceedings were initiated against appellant under the Bihar Land Reforms (Fixation of Land Ceiling and Acquisition) Act, 1961. The Deputy Collector by an order dated 15.04.76 held that the appellant was a separate Math and that the lands held by the appellant could not be included in the lands of the Dhanauti Math, Dhanauti Math filed an appeal and further revision to the Board of Revenue.

E During the pendency of the revision, Section 32-A was brought by amendment w.e.f. 06.04.81 and all pending proceedings abated pursuant thereto. The Deputy Collector initiated suo motu proceedings on 12.08.81 against the appellant and held that Dhanauti Math had several Maths under its management including the appellant's Math. The ceiling area was determined holding that the land was held by Dhanauti Math. The order of the Dy. Collector was upheld by the appellate court, revisional court and the High Court.

G In appeal to this court it was contended that the reopening of the proceedings was bad in law as the order of the Dy. Collector dated 15.04.76 had become final and no proceedings were pending consequent to the abatement by virtue of Section 32-A. It was also contended that the appellant Math was only subsidiary to Dhanauti Math and could not be treated as a 'family' of Dhanauti Math as defined in Section 2(ee) of the 1961 Act and, therefore, the land held by the appellant Math could not be included in the land of Dhanauti Math for the purposes of determining

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the ceiling.

Dismissing the appeals, the Court

HELD : 1. Explanation (1) to Section 2(ee) of the Act made it clear that the word "person" includes any company, institution, trust, association or body or individuals, whether incorporated or not. The appellant Math was a part of the Dhanauti Math and, therefore, could not be treated as an independent person. The land belonging to the appellant must be included with the land of the Dhanauti Math. [347-A, F]

2. The reopening of the proceedings was not challenged in the High Court and as such the same could not be raised. Moreover, in computation proceedings the authority cannot go into the validity of reopening of proceedings. [346-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1216 of 1992.

From the Judgment and Order dated 10.7.84 of the Patna High Court in C.W.J.C. No. 1241 of 1984.

A. Sharan for the Appellant.

Pramod Swarup, Ms. Niranjana Singh for S.P. Singh for the Respondents.

The following Order of the Court was delivered :

The appellant is in possession of 15.36 acres of land of village Baletha under Siwan Prakhhand, State of Bihar, Dhanauti Math of Kabir Panth was notified under S.10(1) of the Bihar Land Reforms (Fixation of Land Ceiling and Acquisition) Act 1961, (for short, the Act). When the proceedings were initiated, the Deputy Collector Land Reforms by his proceedings dated 15.4.1976 held that the appellant is a separate Math and that therefore, the land held by the appellant could not be included in the lands of Dhanauti Math. The Dhanauti Math carried the matter in appeal in respect of other lands and also in further revision to the Board of Revenue. While the revision was pending, by Amendment Act Section 32-A was brought on statute w.e.f. 6.4.1981. The effect of the amendment is that all pending proceedings stood abated. Thereafter power has been given to start suo motu ceiling proceedings afresh. In exercise of the power, the Dy. Collec-

A tor, Land Reforms initiated the proceedings on 12.8.81. In those proceedings it was held that Dhanauti Math is having several maths under its management like Bharatheri Math Maujahidpur Math etc. including the appelland Math and therefore, all the lands are held by Dhanauti Math. Accordingly ceiling on the holding was determined. On appeal, it was confirmed and on further revision, the Board of Revenue by order dated 19.1.84 confirmed the same. When the appelland filed the C.W.J.C. No. 1241/84 in the High Court challenging the correctness of the findings recorded by the authorities, by order dated 10.7.84 the High Court dismissed the same *in limine*. Thus this appeal, by special leave.

C It is firstly contended that reopening of proceedings is bad in law. The main reason on which the contention raised is that the Dy. Collector had declared by his proceedings dt. 15.4.76 that the appelland was a separate entity and that independently held the land. It was allowed to become final. Therefore, there was no proceedings pending in consequence of which the abatement had not taken place by operation of Sec.32-A.

D Unfortunately, we cannot give acceptance to the contention for the reason that reopened proceedings were allowed to become final as they were not challenged by filing any writ petition in the High Court. In computation proceedings the authority cannot go into the validity of reopening of proceedings. Therefore, it is not open to the appelland to raise this contention.

E It is next contended that the appelland is only a subsidiary to Dhanauti Math and it is not a family as defined under Sec. 2(ee) of the Act and that therefore, the lands held by the appelland cannot be included in the land by Dhanauti Math. This contention too has no force.

F Section 2(ee) reads thus :

"2(ee) "Family" means and includes a person, his or her spouse and minor children.

G 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 person law shall not be relevant or be taken into consideration in determining the composition of the family for the purposes of the Act."

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Though the main part of 'family' has been widely defined to mean and include enumerated entities, explanation-I makes the matter amply clear that the word 'person' includes any company, institution, trust, association or any body of individuals whether incorporated or not. The revisional authority concluded after considering the evidence thus :

"On a perusal of the order of the learned D.C.L.R. Siwan dated 15.4.1976 (Annexure V to the petition for revision) shows that Mahanth Muneshwar Goswami of Dhanauti Math had stated that there were several subsidiary Math under the Dhanauti Math such as Bharatheri Math, Baletha Math, Maujahidpur Math etc. In addition to this it is also admitted that the Mahanth of Baletha Math was impleaded on a party in the Title Suit relating to Dhanauti Math. Both these facts clearly indicate that Baletha Math is a part of Dhanauti Math. If this was not so the petitioner could have easily produced the registration papers of Dhanauti Math to indicate that Baletha Math was not part of the same. He should have also produced a certificate from the Bihar State Religious Trust Board to confirm that Baletha Math and Dhanauti Math were separate identities and has, nothing to do with one another. Though ample time was available to the petitioner - landholder, he did not do so."

In view of the finding that Baletha Math is part of Dhanauti Math, admittedly it is a trust. Therefore it cannot be treated to be a subsidiary as contended for in the light to the finding by the final revisional authority.

It is next contended that the above finding is not based on evidence and the reasoning is perverse and therefore it is open to this Court to go into the question and decide the matter afresh. We are afraid we cannot accede to this contention. It is seen that the revisional authority and all the authorities on appreciation of evidence concurrently came to the conclusion that the appellant's Math is a part of Dhanauti Math. It being a finding of fact on consideration of material placed before the authorities, it is not open to this Court to appreciate the finding and to come to a different conclusion.

The appeal is accordingly dismissed. No costs.

A.G.

Appeal dismissed.