

(5) 'Local authority' in this section means a local authority as defined in the General Clauses Act, 1887 (1 of 1887) and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for conservancy of a river."

5. The aforesaid provision, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-article (2) of Article 185, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges. We make it clear that the rights of the local authority as flowing under Section 135 of the Indian Railways Act, 1890 stand preserved in the event of the Central Government moving into the matter, if not already moved. In the circumstances of the case, however, there will be no order as to costs.

(1992) 1 Supreme Court Cases 102

(BEFORE RANGANATH MISRA, C.J. AND KULDIP SINGH J.)

MADHU KISHWAR AND OTHERS .. Petitioners;

Versus

STATE OF BIHAR AND OTHERS .. Respondents.

Writ Petition Nos. 5723 of 1982 and 219 of 1986†, decided on October 11, 1991

Tenancy and Land Laws — Chhota Nagpur Tenancy Act, 1908 — Sections 7 and 8 — Scheduled Tribe — Succession to property by 'descendants in the male line', and 'the heirs male in the male line' — Held, exclusion of females from inheritance inappropriate — State of Bihar directed to re-examining 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 — Constitution of India, Articles 164(1), 15(4), 46, 338 and 342

† Under Article 32 of the Constitution of India

Jitmohan Singh Munda v. Ramratan Singh, 1958 BLJR 373, referred to
Constitution of India — Articles 32 and 14 — PIL — State Act dis-
criminating against females in matters of inheritance challenged

a

R-M/T/10943/C

Advocates who appeared in this case :

Ms Pinky Anand and D.N. Goburdhan, Advocates, for the Petitioners;
B.B. Singh, Pramod Swarup, J.P. Verghese, L.J. Vadakare and Ms Kamini Jaiswal,
Advocates, for the Respondents.

b

ORDER

1. These two petitions under Article 32 of the Constitution chal-
lenge 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 a magazine while petitioners 2 and 3 are two ladies of the 'Ho'
tribe, admittedly one of the Scheduled Tribes residing in Singhbhum dis-
trict of Bihar. The petitioners in the other writ petition belong to the
'Oraon' tribe of the Chhota Nagpur area. Challenge is essentially to Sec-
tions 7 and 8 of the Chhota Nagpur Tenancy Act of 1908. Sections 7 and
8 of the Act provide:

c

d

"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:

e

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.

f

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

g

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

h

(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."

i

2. Reliance has been placed on a Division Bench decision of the Patna High Court in the case of *Jitmohan Singh Munda v. Ramratan Singh*¹ 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 a 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 a Mundari khunt kattidari in their 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. The 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 her 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 widow 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 the 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

1 1958 RI JR 373

the family had adopted Hindu law and was not bound by its own caste custom.

a 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
b 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 ques-
tion and it has come to the conclusion that by custom prevalent among
the Scheduled Tribes a female heir is excluded from succession and in
c case the law was otherwise interpreted or changed and property was
allowed to go into the hands of female heirs, there would be great agita-
tion and unrest in the area among the Scheduled Tribe people who have
custom-based living.

d 5. Scheduled Tribe people are as much citizens as others and they
are entitled to the benefit of guarantees of the Constitution. It may be
that the law can provide reasonable regulation in the matter of succes-
sion to property with a view to maintaining cohesiveness in regard to
Scheduled Tribes and their properties. But exclusion from inheritance
e 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 pur-
pose 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 cir-
cumstances, instead of disposing of the two petitions by a final order we
f 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.

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

(1992) 1 Supreme Court Cases 105

h (BEFORE M.H. KANIA, N.M. KASLIWAL AND M. FATHIMA BEEVI, JJ.)

Civil Appeal No. 4094 of 1991

DR UMA KANT

.. Appellant;

Versus

i DR BHIKALAL JAIN AND OTHER

.. Respondents.