

Kamala Neti (Dead) Thr. Lrs. vs Special Land Acquisition Officer on 9 December, 2022

Author: M.R. Shah

Bench: Krishna Murari, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6901 OF 2022

Kamla Neti (Dead) through LRs

...Appellants

Versus

The Special Land Acquisition
Officer & Ors.

...Respondents

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Orissa at Cuttack in Land Acquisition Appeal No.79 of 2015 by which the High Court has dismissed the said appeal preferred by the appellant herein and has confirmed the order passed by the learned Reference Court, the original applicant has preferred the present appeal.

2. The dispute is with respect to the apportionment of the amount of compensation with respect to the land acquired. The land originally stood recorded in the name of late Satyananda Negi a common ancestor of the appellant and the other coparceners. The said Satyananda died leaving behind his two sons namely Chakradhar and Gajadhar. Chakradhar died leaving behind his four sons namely Chintamani, Parakhita, Basudev and Kulamani and one daughter Kamla (the appellant herein). Similarly, Gajadhar died leaving behind his two daughters namely Kumari and Kumudini. With respect to the land acquired, Khasra No.81, Mouza Kopsingha which originally stood recorded in the name of late Satyananda Negi, the amount of compensation was settled at Rs.5,97,35,754/- in favour of the respondent nos. 2 to 5 herein i.e. Kadamba Negi, Janhabi Negi, Basudev Negi, Lalita

Negi and daughters of Gajadhar i.e. Kumari Dhrua and Kumudini Majhi.

2.1 At the instance of the appellant claiming to be the daughter of Chakradhar and claiming 1/5th share in the amount of compensation a reference was made to the Reference Court under Section 30 of the Land Acquisition Act. The Reference Court – the learned Senior Civil Judge, Sundargarh rejected the claim of the appellant/share of the appellant in the compensation, mainly on the ground that as the parties belong to Scheduled Tribe Community, the provisions of the Hindu Succession Act shall not be applicable and therefore the appellant being a daughter shall not be entitled to the share in the amount of compensation. The order passed by the learned Reference Court denying the share in the amount of compensation has been confirmed by the High Court by the impugned judgment and order. Hence, the present appeal against the impugned judgment and order passed by the High Court.

3. Learned counsel appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of Madhu Kishwar & Ors. Versus State of Bihar & Ors., (1996) 5 SCC 125 in support of his submission that the appellant being a daughter shall be entitled to the share in the amount of compensation even applying the provisions of the Hindu Succession Act.

3.1 It is vehemently submitted that as observed and held by this Court denial of right to succession to Scheduled Tribe women would amount to deprivation of the right to livelihood under Article 21 of the Constitution of India. It is submitted that as observed and held by this Court exclusive succession in the male line of heirs must remain in suspended animation till the immediate female relatives of the last male tenant continue to depend their livelihood on the land. 3.2 It is submitted that as observed and held by this Court in the aforesaid decision, to deny the equal right to the women/daughter belonging to Scheduled Tribe would be gender-based discrimination and the daughter cannot be denied the right in the joint family property in which all coparceners have the equal share.

Making the above submissions and relying upon above decision, it is prayed to allow the present appeal and to hold that the appellant being daughter of one of the coparceners shall be entitled to 1/5 th share in the amount of compensation.

4. Present appeal is vehemently opposed by Dr. Kedarnath Tripathy, learned counsel appearing on behalf of the contesting respondents.

4.1 It is submitted that in the present case the parties are members of the Scheduled Tribe. The suit land belongs to one Satyananda Negi and after his death, the said land devolved upon his two sons Chakradhar and Gajadhar with the right of survivorship being available. The said Chakradhar passed away in the year 1948 before the commencement of Constitution of India and the Hindu Succession Act, 1954. That after the death of Chakradhar and his wife, his share in the property stood devolved upon his four sons who held 1/4 th share each by way of succession. After more than 60 years of such succession by the four sons holding 1/4 th shares each, their properties were acquired by the Government for establishment of Ultra Mega Power Project at Bhedabahal, District Sundargarh. The compensation for the acquisition of land was determined and the same was duly

paid to the four sons – respondents herein being the owners of the property. It is submitted that thereafter the appellant herein filed an application before the L.A.O., Sundargarh claiming their 1/5 th share in the compensation being one of the descendants of the Satyananda Negi. That the matter was referred to the Court of Senior Civil Judge, Sundargarh in a matter of reference under Section 30 of the Land Acquisition Act made by the Special Land Acquisition Officer. The learned Reference Court dismissed the application by holding that she is not entitled to claim any amount in the amount of compensation as being member of the Scheduled Tribe, the provisions of Hindu Succession Act shall not be applicable and therefore, she would not have any right of survivorship in the joint family property. It is submitted that considering the provisions of the Hindu Succession Act more particularly Section 2(2), the High Court has not committed any error.

4.2 It is submitted that the appellant is not entitled to receive any share in the suit property by virtue of Section 8 of the Hindu Succession Act. It is submitted that her father Chakradhar passed away way back in the year 1948 before the enactment of the Hindu Succession Act, 1954 and even before the Constitution of India. It is submitted that apart from the fact that in view of Section 2(2) of the Hindu Succession Act, 1954, the Hindu Succession Act, will not be applicable to the members of the Scheduled Tribe, without any explicit clause in the Hindu Succession Act, the Hindu Succession Act cannot be given a retrospective operation to provide compensation to the appellant.

4.3 It is further submitted that as per Section 2(2) of the Hindu Succession Act, the Act shall not be applicable to the members of the Scheduled Tribe. It is submitted that in the case of Labishwar Manjhi vs. Pran Manjhi and Ors., (2000) 8 SCC 587, it is clearly held that if the members of the Scheduled Tribe follow customary and practices of Hinduism, then and then only the Hindu Succession Act would be applicable. It is submitted that in the present case there is no evidence on record to prove that the parties have Hinduised. It is submitted therefore Hindu Succession Act shall not be applicable to the parties herein.

4.4 It is further submitted that as held by this Court in a catena of decisions whenever there is a conflict between the law and equity, the law would prevail. Reliance is placed on the decision of this Court in the case of B. Premananda and Ors. Vs. Mohan Koikal and Ors., (2011) 4 SCC 266. It is submitted that as observed and held by this Court in the case of J.P. Bansal vs. State of Rajasthan & Anr. AIR (2003) SC 1405 and State of Jharkhand & Anr. Vs. Govind Singh, JT 2004 (10) SC 349, it is for the legislature to amend the law and not the Court.

4.5 It is submitted that this Hon'ble Court on many occasions denied extending the benefits of Hindu Succession Act to the tribal communities unless the same has been notified by the Central Government. Reliance is placed on the observations made by this Court in the case of Madhu Kishwar (supra).

Making above submissions, it is prayed to dismiss the present appeal.

5. Heard learned counsel for the respective parties at length.

6. A short question which is posed for consideration of this Court is whether the appellant/petitioner being the daughter is entitled to the share in the compensation with respect to the land acquired, on survivorship basis under the provisions of Hindu Succession Act? At the outset, it is required to be noted that the appellant belongs to tribal community and is a member of Scheduled Tribe. As per Section 2(2) of the Hindu Succession Act, the Hindu Succession Act will not be applicable to the members of the Scheduled Tribe. Therefore, as such as rightly observed by the High Court the appellant cannot claim any right of survival under the provisions of the Hindu Succession Act. Therefore, so long as Section 2(2) of the Hindu Succession Act stands and there is no amendment, the parties shall be governed by the provisions of Section 2(2) of the Hindu Succession Act. Therefore, though on equity we may be with the appellant being daughter and more than approximately 70 years have passed after the enactment of the Hindu Succession Act and much water has flown thereafter and though we are *prima facie* of the opinion that not to grant the benefit of survivorship to the daughter in the property of the father can be said to be bad in law and cannot be justified in the present scenario, unless Section 2(2) of the Hindu Succession Act is amended, the parties being member of the Scheduled Tribe are governed by Section 2(2) of the Hindu Succession Act. It is observed and held by this Court in the case of Mohan Koikal (*supra*) that when there is a conflict between the law and equity, the law would prevail. Equity can only supplement the law. There is a gap in it but it cannot supplant the law.

6.1 If the claim of the appellant on the basis of the survivorship under the Hindu Succession Act is accepted in that case it would tantamount to amend the law. It is for the legislature to amend the law and not the Court.

6.2 Now so far as the reliance placed upon the decision of this Court in the case of Madhu Kishwar (*supra*) by the learned counsel for the appellant is concerned, at the outset it is required to be noted that by the majority decision this Court refused to strike down the provisions of Chota Nagpur Tenancy Act, 1908 which provided the succession to property in the male line of heirs and denying the right to Succession to the daughter, on the touchstone of Article 14. However, this Court read into the said provisions and observed and held that the intervening right of female dependents/descendants under Sections 7 and 8 of the Act shall be carved out, by suspending the exclusive right of the male succession till the female dependent/descendent chooses other means of livelihood manifested by abandonment or release of the holding kept for the purpose. This Court by observing so disposed of the writ petition. However, by disposing the writ petition this Court issued direction to the State of Bihar to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the law.

6.3 This Court also directed to examine the question of recommending to the Central Government whether the Central Government consider it just and necessary to withdraw the exemptions given under the Hindu Succession Act and the Indian Succession Act in so far as the applicability of these provisions to the Scheduled Tribes in the State of Bihar is concerned.

6.4 However, Mr. Justice K. Ramaswamy in his concurrent judgment has further observed and held that the provisions of the Hindu Succession Act and the Indian Succession Act would apply to the Scheduled Tribes, the general principles contained therein being consistent with justice, equity,

fairness, justness and good conscience would apply to them. Thereafter it is held that the Scheduled Tribe women would succeed to the estate of their parent, brother, husband, as heirs by intestate succession and inherit the property with equal share with the male heir with absolute rights as per the general principles of the Hindu Succession Act, 1956, as amended and interpreted by this Court. However, it is required to be noted that the same is minority view.

7. Under the circumstances in view of Section 2(2) of Hindu Succession Act and the appellant being the member of the Scheduled Tribe and as the female member of the Scheduled Tribe is specifically excluded, the appellant is not entitled to any right of survivorship under the provisions of Hindu Succession Act. No error has been committed by the High Court. The appeal therefore deserves to be dismissed and is accordingly dismissed.

7.1 Before parting, we may observe that there may not be any justification to deny the right of survivorship so far as the female member of the Tribal is concerned. When the daughter belonging to the non-Tribal is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of the Tribal community. Female tribal is entitled to parity with male tribal in intestate succession. To deny the equal right to the daughter belonging to the tribal even after a period of 70 years of the Constitution of India under which right to equality is guaranteed, it is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe.

7.2 Therefore, though we dismiss the present appeal, it is directed to examine the question by the Central Government to consider it just and necessary to withdraw the exemptions provided under the Hindu Succession Act in so far as the applicability of the provisions of the Hindu Succession Act to the Scheduled Tribes and whether to bring a suitable amendment or not. We hope and trust that the Central Government will look into the matter and take an appropriate decision taking into consideration the right to equality guaranteed under Articles 14 and 21 of the Constitution of India.

.....J. (M. R. SHAH)J. (KRISHNA MURARI) New Delhi;

December 9, 2022.