(2007) 04 PAT CK 0063

In the Patna High Court

Case No : CWJC No. 926 of 2007

Baidya Nath Prasad Singh — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Stamp Act, 1899 — Section 47A

Citation : (2007) 3 PLJR 393

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—An application has been filed being IA No. 1129 of 2007 by which amendment has been sought to be made to the writ petition with regard to facts and the relief in view of subsequent events during pendency of the writ application. State has no objection. The same is allowed. By this application, Memo No. 1 dated 15.1.2007 of the DCLR, Rajgir has been questioned directing the petitioner to pay stamp duty at the present market value of the property in question. A short question of law is involved in the present writ application and, as such, the matter is, with consent of parties, heard and being disposed of at the stage of admission stage itself.

2. A land was being sought to be transferred. The petitioner filed an application for pre-emption in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in respect of the said land and deposited the requisite consideration money. Pursuant to petitioner''s application for pre-emption, Land Ceiling Case No. 25 of 1979-80 was registered before the respondent-DCLR who, after noticing the parties and hearing them, allowed the application by order dated 26.3.1981 (Annexure-1 to the writ application). The operative part of the order reads as follows:

"Therefore, I order the O.P. to convey the land in favour of the applicant on the same terms and conditions as envisaged in the deed within one month of the date of this order failing which further legal action will be taken."

3. Therefore, it would be seen that the direction of the competent statutory authority was to get the deed executed on the same terms and conditions as envisaged in the deed. In the deed, the consideration was clearly mentioned. It is not in dispute that this pre-emption application was filed on 8.3.1980 that is before the introduction of Section 47A to the Indian Stamp Act by Bihar Amendment which came in the year, 1988.

4. It would, thus, be seen that the right of parties crystallised in 1980-81. What delayed the execution and registration was that this matter was fought as between the parties upto the Hon''ble Supreme Court which ultimately decided the matter in the year, 2004. Petitioner is not to be blamed for the delay as the matter was subjudiced till 2004. Once the matter was decided finally by the Hon''ble Supreme Court in favour of the petitioner. the petitioner approached the DCLR for executing the sale deed as the vendor was not ready and willing to do the same. The DCLR having no option agreed to do the same out by the impugned communication asked for the present market valuation of the land for the purpose of determining the stamp duty payable. It is this action which brought the petitioner to this Court. Rs. 4,00,000/- as stamp duty based on present market valuation of the land in question was demanded apparently by virtue of Section 47A of the Stamp Act (Bihar Amendment) which, as noted above, came in force in 1988.

5. Having considered the matter, I am of opinion that the rights of parties crystallised in the year, 1980-81 and the delay, if any, was because of official procedure. Petitioner had nothing to do with it. The matter was subjudiced before one Court or the other ending with the judgment of the Hon''ble Supreme Court in the year 2004 in favour of the petitioner. The right to get the document registered was vested in the petitioner in the year. 1980-81 and he exercised that option but it was delayed for other considerations. Once an order favorable to him was passed it automatically relates back to the date when the right was crystallised which, as indicated above, was prior to the amendment of the Stamp Act. That being so for the purposes of valuation, the statutory provisions as indicated above, was prior to the amendment of the Stamp Act. That being so for the purposes of valuation, the statutory provisions as standing on the day when the right and crystallised would be taken into account and not the provisions or the value thereafter. Moreover, it cannot be lost sight of that the decree of the competent court is to convey the land on the same terms and conditions as in the original deed. The effect in law is that the original sale deed as between the vendor and the vendee would stand substituted by sale deed as between the vendor and the pre-emptor and apart from substitution of names, there would be no material change. Thus, for the purposes of valuation for the stamp duty, the value as on the date of transaction as ordered by the Court would be taken into

account. In taking this view, I am fortified by a judgment of this Court in the case of Baiju Singh Vs. The State of Bihar and Others wherein under similar circumstances, this Court held that the right having accrued prior to 1988 amendment the valuation would be as per the law and the facts emanating on the day right has accrued. That was a case of specific performance of a contract.

6. In that view of the matter, I allow this writ application and quash the impugned Memo for the DCLR demanding additional stamp duty. The document for the purposes of stamp duty would be valued as stated therein being the consideration as originally mentioned and would not be governed by the amended provisions of the Stamp Act, namely, Section 47A thereof. This writ application is, accordingly, allowed.