
(2009) 06 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 11668 of 2008

Banarsi Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

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

Citation : (2009) 3 PLJR 763

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : S.K. Ghosarvey, M.K. Pandey and R.K. Pandit, for the Appellant; Kumari Amrita for the State, for the Respondent

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the State. Petitioner is the purchaser. He has filed this application for quashing the order, dated 16.5.2006, passed by the Additional Member, Board of Revenue, Bihar, Patna, allowing Prevision Case No. 148 of 2004 in favour of the pre-emptor-respondent No. 5. Further, prayer of the petitioner is for restoration of order, dated 29.5.2003, passed by the Deputy Collector, Land Reforms, Sadar, Bhagalpur, in Land Ceiling Case No. 5 of 2000-2001 and the order, dated 28.6.2004, passed by the Collector, Bhagalpur, in Ceiling Appeal Case No. 45A of 2003-2004. By these two orders, pre-emption application, filed by respondent No. 5, had been dismissed.

2. Petitioner's case is that he purchased land of plot No. 186, khata No. 16 at mauza Satghara, from respondents 6 and 7 through registered sale deed No. 4344 on 5.5.2000. On the same date he purchased another piece of land through registered sale deed No. 4345 measuring 6(1/2) katha from respondents 6 and 7, which is adjacent of the same plot purchased through registered sale deed No. 4344. Both the properties were purchased by the petitioner from respondents 6 and 7, which is part of the same plot and the sale deeds were executed on the

same date. Respondents 6 and 7, after transferring the land in favour of the petitioner, got the transferred land measured because in the northern boundary of the transferred land, some excess area had been mentioned in the sale deeds. Accordingly, respondents 6 and 7 filed a deed of correction vide deed No. 12350 and 12351 on 1.11.2000 relating to both the sale deeds giving correct boundary of the land transferred in favour of the petitioner. On account of the deed of correction the boundary earlier given in the sale deed No. 4344 and 4345, dated 5.5.2000 was changed.

3. Respondent No. 5 filed an application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short, "the Act") for exercising right of pre-emption with respect to land transferred through sale deed No. 4344 and L.C. Case No. 5 of 2000-2001 was registered. Respondent No. 5 claimed to be the boundary tenant of the purchased land. The petitioner appeared and contested the pre-emption case on grounds that by virtue of deed of correction, respondent No. 5 is not the boundary raiyat. It was also the case of the petitioner that the nature of the land is homestead and pre-emption application is not maintainable. Further, ground which was taken by the petitioner was that on account of purchasing lands through two registered sale deeds of the same plot, petitioner himself has become boundary raiyat of each of the lands, purchased by him and pre-emption case, in the given circumstance, can not be allowed. Further, it was contended by the petitioner that the pre-emption application is not maintainable as respondent No. 5 has not complied Rule 19 of the Bihar Land Ceiling Rules and for all these reasons the preemption application is fit to be dismissed.

4. The Deputy Collector, Land Reforms, Bhagalpur, by order, dated 29.5.2003, considering the pleadings of the parties rejected the, pre-emption application for all four grounds taken by the petitioner. The finding recorded by the Deputy Collector, Land Reforms, was that on account of execution of correction deed, respondent No. 5 is not the boundary tenant. It was also held that since two sale deeds have been executed on the same date for parts of same plot of land the purchaser himself has become the boundary tenant of the purchased land and pre-emption application is not maintainable. The Deputy Collector, Land Reforms, Bhagalpur, further, held that Rule 19 of Bihar Land Reforms Rules, 1963, provides that application by co-sharer or raiyat of adjoining land for transfer of land u/s 16(3) of the Act shall be presented in L.C. Form No. 13 and the purchase money together with a sum equal to ten per cent shall be deposited in the treasury/sub treasury of the district, within which the land transferred is situated. Rule 19(3) of the Act further provides that a copy of such application shall also be sent simultaneously by registered post with acknowledgement due to the transferor. Rule 19(3) of the Act being mandatory in nature, in absence of compliance of any mandates entire proceeding u/s 16(3) of the Act will be vitiated in law. On account of non-compliance of Rule 19 of the Act the pre-emption application, itself, is not maintainable. Pre-emption-application of respondent No. 5 was, accordingly, rejected. The pre-emptor filed an appeal before the Collector,

Bhagalpur, against the order of rejection passed by the Deputy Collector, Land Reforms, Bhagalpur, and it was registered as Appeal Case No. 45A of 2003-2004. The Collector, Bhagalpur, after hearing both the parties and considering the facts as well as law applicable in the case, affirmed the order passed by the Deputy Collector, Land Reforms, Bhagalpur, by order, dated 28.6.2004. The pre-emptor preferred Revision case No. 148 of 2004, which was heard and decided by the Additional Member, Board of Revenue. The Additional Member, Board of Revenue, by his order, dated 16.5.2006, allowed the claim of the pre-emptor. The finding recorded by the Additional Member, Board of Revenue is that the petitioner is the boundary tenant of the transferred land. Non-compliance of Rule 19 of the Act has not caused any prejudice to the petitioner. The plea taken by the transferee that the nature of the land is homestead is not correct as in the recent consolidation survey record of right, the land is found recorded as agricultural. It was also held that on perusal of the sale deed it transpires that both vendors and vendee are professional cultivators, as such, the land must have been purchased for agriculture purposes.

5. The counsel for the petitioner has submitted, that it is settled law that if the purchaser purchases two portions of same plot by two separate registered sale deeds, the pre-emption application can not be allowed as transferee himself becomes an adjoining raiyat of each transferred lands on account of other sale deed. In support of this contention the petitioner has placed reliance on a decision reported in *Nathuni Mahto Vs. State of Bihar and Others*, . The facts, reported in decision, are similar and identical to the present case and the finding recorded are as follows :

"In view of the series of judgments of this Court, it is almost settled that before an application u/s 16(3) of the Act is filed, the purchaser by purchasing an adjoining plot can himself become the holder of an adjoining plot in order to defeat the pre-emption application which is filed later. Of course different considerations will arise where purchaser tries to become a holder of an adjoining plot by making purchase of the adjoining land after filing of the application u/s 16(3) of the Act. In the instant case the petitioner has not purchased the adjoining plot on different dates but on the same day and the registration in respect of the two deeds had also been completed much before filing of the two applications u/s 16(3) of the Act. As such there should not be any difficulty in holding that when the pre-emption applications were filed by two different sets of pre-emptors for reconveyance of the two plots in two cases, on that day, the petitioner himself had become the holder of adjoining plots in both the cases and he could have resisted the claim for reconveyance of either of the plots."

6. Counsel appearing for respondent No. 5 has, on the other hand, submitted that respondent No. 5 is a boundary raiyat on the basis of purchasing part of the same plot from the co-sharer of the vendor in the year 1971. On the other hand, petitioner purchased the disputed land in the year 2000, since, respondent No. 5

became the boundary tenant much earlier than the petitioner, as such, he has got a preferential right on account of being the boundary tenant of the purchased land.

7. I find that the law, in this regard, is otherwise. The right of pre-emption is a very weak right. In case, the purchaser himself becomes a boundary tenant of vended plot before filing of the pre-emption application in that case preference has to be given to purchaser and the claim of the pre-emptor can not be allowed on this count that prior to purchase of the vended land by the purchaser, the pre-emptor was a boundary tenant pre-emptor's claim can be allowed only when there is any evidence to show that any purchase has been made by the purchaser subsequent to filing pre-emption application, with an intention to defeat the right of pre-emption. In the present case, the facts are otherwise. The petitioner had purchased adjacent plot on the same date through two registered sale deeds and it can not be stated that there was any design to defeat the right of preemption. Considering the facts of the case and the reported decision *Nathuni Mahto Vs. State of Bihar and Others*, , I find that the finding recorded by the Additional Member, Board of Revenue, Bihar, Patna, is incorrect and the finding recorded by the Collector, Bhagalpur, and the Deputy Collector, Land Reforms, Bhagalpur, are in consonance with the law.

8. The counsel for respondent No. 5 has also submitted that Rule 19 is not mandatory Rule rather it has been held to be directory and in case of no prejudice being caused to the purchaser, preemption application can not be held to be not maintainable. In support of his contention, relating to Rule 19 of the Act, he has placed reliance on a decision reported in *Siyawati Devi Vs. State of Bihar and Others*, Respondents, on the other hand, are relying on a decision reported in 1995 (1) P.L.J.R., 851 (*Md. Shafique Ahmad vs. The State of Bihar & Ors.*) where it is held that omission to comply with the provisions of Rule 19(3) of the Act would prove fatal to a claim for pre-emption. In the present case transferors were not impleaded as party in the initial stage and consequently they were impleaded. In the given circumstance, as decided in 1989 P.L.J.R., 103 (*Ram Chandra Singh vs. The Sub Divisional Officer, Hajipur & Ors.*) the effect will be fatal and the subsequent steps taken by the pre-emptor to implead the transferor will not cure the illegality which has already been caused due to non-compliance of Rule 19(3) of the Act. The finding recorded by the Additional Member, Board of Revenue, on this count is also not sustainable and it is set aside.

9. The other point which has been raised by the petitioner relates to the nature of the land. Counsel for the petitioner has stated that the land was purchased for homestead which is evident considering the area of land. It can not be conceived that such a small area of land was purchased for agriculture purposes. The nature of the land being the homestead, the pre-emption application in any case was not maintainable. There is concurrent finding of the Deputy Collector, Land Reforms, and the Collector on this point that the vended land is a homestead

land. There was no reason for the Additional Member, Board of Revenue, to set aside the finding recorded by two Courts on the question of fact. In support of this contention, the petitioner has placed reliance on a decision reported in Laxman Mishra and Another Vs. State of Bihar and Others, where it has been held that the concurrent finding of the fact recorded by two Courts reversed by the Revisional Court without application of mind is illegal.

10. Considering the submissions made by the parties and the different decisions relied upon by them as well as the law applicable in the facts of the case, I am of the view that leaving apart of all other questions the pre-emption application filed by respondent No. 5 in the present case is not maintainable for a simple reason that the petitioner himself became adjacent right (Sic--raiyat ?) of the remitted land on the date of purchase itself, that is, much before the date of filing of pre-emption application. This, in itself, is sufficient for rejecting the claim of pre-emption of respondent No. 5. Accordingly, the order passed by the Additional Member, Board of Revenue, Bihar, Patna, dated 16.5.2006, passed in Revision Case No. 148 of 2004 is quashed.