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(1984) 02 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No''s. 2347 and 2348 of 1976

Basudeo Rai and Others APPELLANT

Vs

Altan Rai and Others RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

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

Citation : AIR 1984 Patna 241 : (1984) 32 BLJR 531 : (1984) PLJR 349

Hon'ble Judges : Uday Sinha, J;Satya Brata Sanyal, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Rajeshwar Dayal and Kameshwar Dayal, for the Appellant; Parameshwar Prasad Sinha and Hare Krishna Kumar, for the Respondent

Judgement

S.B. Sanyal, J.—Whether oral sale is reckonable under the provision of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) is the question, which falls for decision in these two writ petitions. These two writ petitions have come up before this bench on reference by single Judge. As the point is common to both the writ petitions, this judgment will govern and dispose of the cases.

2. The point being short, I shall narrate only those facts, which are germane for this purpose. The petitioners are purchasers. By two safe deeds dated 14-4-1971, 12 Kathas and 1 Katha 15 dhoors, out of the survey plot No. 1433 C. S. appertaining to Khata No. 337, Village-Sivaisinghpur, P. S. Mohiudhinagar, District-Samastipur, were acquired by the petitioners. The sale deeds were registered under the Registration Act on 5-5-1971. On 2-6-1971, two applications u/s 16 (3) of the Act were filed by respondents bearing Ceiling Case Na 9 of 1971 (12 Kathas) and Ceiling Case No. 10 of 1971 (1 Katha 15 dhoors). The said claim was on the basis of being adjacent raiyat of cadastral survey plot No. 1432. The petitioners disclosed in the show-cause that prior to the filing of ceiling cases, they had acquired by oral sale 5 dhoors of land of C. S. plot No.

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1432 for a consideration of Rs. 50/-. Therefore, they being adjacent raiyat, the ceiling cases filed by the respondent are not maintainable. It may be stated here that out of C. S. plot No. 1432 during the re-visional survey, three plots have been curved out and they bear Nos. 3252, 3253 and 3251 R. S. The oral purchase of 5 dhoors is out of R. S. plot No. 3251. The respondents are admittedly owner of R S. Plot Nos. 3252 and 3253. Pre-emption application of the respondent failed both in the court of Deputy Collector, Land Reforms as well as before the Additional Collector. Against that the respondents preferred two revisions before the Member, Board of Revenue bearing Nos. 448/74 and 449/74. Member, Board of Revenue, however, was of the opinion that since the claim of the purchaser is based on oral sale to justify their adjacency prior to the filing of pre-emption application, and as oral sale cannot be taken notice of under the provision of Section 16, the same cannot defeat the claim of pre-emptor. The two revision petitions were disposed of by common judgment by Member, Board of Revenue. The purchasers have, therefore, filed two writ petitions assailing the decision of the Member, Board of Revenue in refusing to reckon their oral purchase on 25-4-1971 of the adjacent plot, prior to the filing of preemption application on 2-6-1971.

3. Mr. Balbhadra Prasad Singh, learned counsel appearing for the petitioners has submitted that u/s 54 of the Transfer of Property Act, tangible immovable property of a value less than Rupees 100/- can be effected merely by delivery of the property. It is not required in law that such transfer should be made by a registered instrument. According to the learned counsel, u/s 18 of the Registration Act, 1908, registration in such cases is optional. This being the law regarding registration, the oral purchase of the petitioner was illegally ignored in granting relief to the respondent, pre-emptor. The right of pre-emption itself being a very weak right, the court should be slow in upholding pre-emption. Mr. Parmeshwar Prasad, learned counsel, appearing for the respondent, pre-emptor, on the other hand, contended that for the purpose of Section 16 of the Act, every transfer must be by a registered document in accordance with the provision of Registration Act and drew our attention to Section 16 (2) (iii). He further contended that if they be not so, the very purpose and object of Section 16 will be frustrated. According to the learned counsel, whether the pre-emptor''s right is weak one is wholly irrelevant for the purpose of the determination of the question in hand.

4. Before I proceed to consider the point, I may state that this court has authoritatively laid down the law in the case of Koshila Devi Vs. Parvati Devi, that the provision of Section 16 (2) (iii) of the Act is not repugnant to Succession Act, a central Act. They operate in their respective fields. The provision contained u/s 16 (2) (iii) is confined to the Act itself. The aforesaid provision in the Act does not apply beyond the ambit of the Act. The main purpose of this act is for regulating the acquisition of status or raiyat by certain under-raiyats, acquisition of surplus land by the State, Land improvement by obtaining compactness of the holding, fixation of Ceiling restriction etc. This act, therefore, falls under Entry 18

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of the State list, Union list does not cover the subject so as to attract Article 246 of the Constitution. Furher, this being not a subject matter of concurrent list, Article 254 of the Constitution is in-applicable. The Revenue authorities under the Act are guided by considerations of bona fides or otherwise of the transfers. S. K. Jha. J., while dealing with the question of repugnancy of the Act qua Succession Act, relating to an unregistered will, observed as follows:--

"the ceiling Act is limited to the agricultural lands and as a whole, as already observed above, it falls within the powers given to the State by Item 18 of List IT of the Seventh Schedule. The Indian Succession Act, which was an existing Central Act, is a piece of legislation falling exclusively within Item 5 of the concurrent list (List ITT) covering, inter alia, the field of wills, intestacy and succession. In such cases, therefore, no question of repugnancy arises. Calling into aid the principles of Article 254(2) of the Constitution, therefore, is fallacious."

It will, therefore, be seen that merely because Registration Act permits sale by delivery of possession of properties less than Rs. 100/- without a registered instrument, under the provision of Transfer of Property Act, that did not disentitle the State Legislature to make provision contained u/s 16 (2) (iii) for the purpose of the Act. Section 16 falls under Chapter V of the Act. This chapter deals with restriction on future acquisition. For the proper appreciation of the point involved. I extract the relevant provision of the Act which reads as follows :--

Restriction on future acquisition by transfer etc. :--

(1) No person shall after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area.

Explanation :-- For the purposes of this section ''transfer'' does not include inheritance, bequest or gift.

(2) (i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under Indian Registration Act, 1908 (XVI of 1908), as to the total area of land held by himself or through any other persons anywhere in the State.

(ii) No such registering authority shall register any document evidencing any transaction if, from the declaration made under Clause (I), it appears that the transaction has been effected in contravention of the provision of Sub-section (i).

(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1903).

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Explanation :-- Nothing in this sub-section shall be deemed to have any effect on provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

(3) (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed :

5. Submission of Mr. Balbhadra Prasad, learned counsel for the petitioner is that the court shall construe the provision of Section 16 (2) (iii) in such a manner as being consistent with the provisions of Section 54 of the Transfer of Property Act, a Central Act. If such a construction is possible, the court should deter from making construction which brings the said subsection in conflict with the Central Act. According to the learned counsel, the true interpretation of the said sub-section would be such transfers, which are required to be registered u/s 54 of the Transfer of Property Act, those should be in accordance with the provision of the Indian Registration Act, 1908. The sub-section does not require, according to the learned counsel that all transfers, exchanges lease, mortgage, bequest or gift must be by a registered document. Had that been so, he submits then the sub-section would have read "no land shall be transferred, exchanged, leased, mortgaged, bequested or gifted without a document registered" and stopped at that. This would have clearly indicated the legislative intent. But that being not the intent of the legislature, the subsequent words used are "in accordance with the provisions of the Indian Registration Act, 1908". These words according to the learned counsel for the petitioners, gives the real clue, for interpretation of the said sub-section. In short, the learned counsel submits that if his contention is not accepted, these words would not only be surplusage but will bring the Section in conflict with the various Central Acts, namely, the Transfer of Property Act, Indian Succession Act, Indian Registration Act etc.

6. I do not think that the submission of learned counsel for the petitioners is correct. I have already indicated above, there is no question of repugnancy and that constraint is not required to be kept in view for interpretating the word "transfer" u/s 16 of the Act. The interpretation of the word ''transfer'' has further to be confined only to the previsions of the Act in order to facilitate the Revenue Authorities to implement and adjudicate the object of the Act as well as the various provisions of the Act.

7. It is well-known principle of construction that the previsions of a statute have to be construed harmoniously in order to ascertain the true legislative intent. The previsions of an enactment should be interpretated, if possible, to give effect to all. This is known as the rule of harmonious construction, see Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, Court should shun an

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interpretation, which spell out conflict in relation to two provisions of statute. The usual rule of construction is that the court should not concentrate its attention on a particular provision in isolation which may be in dispute between the parties, but should consider it in its proper setting and must have due regard to the ether provisions of the Act and its general scheme and purpose, see Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc., . Single sentence and single provision are not to be selected and construed in a detached manner dissociated from the context, but are to be read together, see Darshan Singh and Others Vs. State of Punjab, . In short, while construing the meaning of words used in a Section, court should attend to such ether provisions of the statute as may tend to throw light upon them.

8. Keeping in view the aforesaid principle of law of interpretation of statute, let us examine the scope of Section 16 of the Act. Section 16 (1) restricts acquisition of land exceeding the aggregate of the ceiling area. This section will operate in two ways. Somebody would be trying to dispose of excess area in order to remain within ceiling area and some persons, who have less than ceiling area may be interested in acquiring the land up to ceiling area. Persons may take to dubious methods to adjust their land holdings by creating Benami transaction, and farzi transaction. The sale and acquisition may not be bona fide, but only to defeat the provisions of the Act. Section 16 (2) (1) requires a declaration in writing duly verified by the transferee to be made before the registering authority under the Registration Act, as to the total urea of land held by him or through any other person. Section 16 (2) (ii) restrains the registering authority from registering a document evidencing any transaction, which has been effected in contravention of the provisions of Section 16 (i). Section 16 (2) (ii) states that no land shall be transferred, exchange, leased......... without a document registered in accordance with the provision of Indian Registration Act. Section 16 (3) (i) confers right on an adjoining raiyat and a co-sharer to claim pre-emption on same terms and conditions contained in the deed of transfer effected by any person of land after the commencement of the Act, provided the claim is made within three months of the date of registration of the documents of transfer. Section 16 (3) (iii) requires the collector, if he allows such an application to direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer. Thus, reading all the provisions of Sections 16, I find that execution of a document and its registration as required under the Indian Registration Act is a must for operation of the various provisions of the said section. If oral sale is permitted the pre-emptor will not know the time of transfer in order to enable him to file his claim u/s 16 (3) of the Act within three months of the transfer. If the interpretation sought to be put by the learned counsel of the petitioner is correct, then oral sale will go out of the purview of the claim of pre-emption. This would be so, because the pre-emption has been permitted within three months of the date of registration of the document of transfer. As there will be no document of transfer nor registration in a case of oral sale, the pre-emptor shall not be entitled to claim preemption. There do not

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appear to be any reasonable classification for not allowing pre-emption with respect to an oral sale and sale by instrument of transfer. The section also confers certain duties upon a transferee as well as on registering authority at the time of registration of the document of transfer. The restraint of the act applies only to documents which come into existence after the commencement of the Act. In my opinion, the words "in accordance with the provision of the Indian Registration Act" has been purposefully engrafted in Section 16 (2) (iii) of the Act. It is not at all a surplusage. The only kind of registration that the Revenue authority has been permitted to take notice of is a registration effected under the provisions of Registration Act and not any Other kind of registration of the document.

9. Had the sub-section omitted the words "in accordance with the provision of Indian Registration Act", it would have led to confusion. Dictionary meaning of the word ''register'' is to make a formal entry of a document in a particular register. The question is in which register? It might not have been a register maintained under the Indian Registration Act. The Indian Registration Act lays down the mode and manner of registration as welt as the time when a document is said to be registered. In the case cf Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., , it was laid down that the right of reconveyance accrues to the pre-emptor only on date of completion of registration of the transfer. In the said case question arose when the cause of action arises for presenting an application for pre-emption u/s 16 (3) (i) of the Act or in other words when the registration is completed under the Indian Registration Act, is it on the day an entry is made in the register or as required u/s 61 of the Registration Act, when the document is copied in the register, maintained under the registration Act? I, therefore, hold that the execution of a document of transfer and the registration thereof in accordance with the Registration Act is an integral part of Section 16 of the Act for the purpose of operation of the various provisions of the said Section more particularly Section 16 (3) (i) of the Act. I will, however, hasten to add that a transfer is required to be registered under the Indian Registration Act for the purpose of Section 16 of the Act. Any transfer other than the said mode cannot be reckoned for the purpose of the said Section. I say so because other Sections particularly, Sub-section (1) (iii) of Section 5 envisages taking cognizance of transfer ether than by a registered instrument for the purpose of the said section.

10. I do not, therefore, find any subtance in the argument of the learned counsel for the petitioners. I cannot pursuade myself to hold that oral sale can be taken notice of by the revenue authorities for the purpose of Section 16 of the Act. No transfer or sale could be taken cognizance of unless such transfer is made by registered instrument duly registered under the Indian Registration Act. Consequently, the petitioners'' oral purchase on 25-4-1971 of five dhoors of land for a sum of Rupees 50/- out of R. S. plot No. 3251 have to be ignored. The said oral acquisition cannot defeat the right of pre-emptor of an adjacent raiyat like that of the respondents.

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11. In the result, these two writ petitions fail and are accordingly dismissed, The decision of the Additional Member, Board of Revenue allowing the claim of pre-emption to the respondent is confirmed. The Deputy Collector. Land Reforms is directed to direct the transferee to convey the land in favour cf the applicant by executing a registered document of transfer within a period to he specified by him. There will, however, no order as to costs.

Uday Sinha, J.

12. I agree.

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