
(2005) 04 PAT CK 0078
In the Patna High Court
Case No : CWJC No. 12684 of 2002

Bechan Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

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

Citation : (2005) 2 PLJR 462

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioners, counsel appearing for respondents 4 and 5 and the counsel appearing for the State. Petitioners are purchasers and respondents 4 and 5 are pre-emptors. Petitioners are aggrieved by institution of proceeding of Misc. Case No. 18 of 1999-2000 whereby the District Magistrate, Khagaria, has allowed the application filed by respondents 4 and 5 with regard to the execution of the sale deeds with respect to the vended lands considering the fact that pre-emption application was allowed by the appellate authority in Misc. Case No. 14 of 1981-1982. Petitioners have further challenged the order passed in Misc. Case No. 14 of 1981-1982 on the ground that the District Magistrate, Khagaria, had allowed the miscellaneous case treating the same as an appeal filed by respondents 4 and 5 though miscellaneous case was preferred by the respondents against the order passed during the pendency of the pre-emption application. The initiation of the proceeding in Miscellaneous Case No. 18 of 1999-2000 is challenged by the petitioners on the ground that it is barred by limitation. Petitioner's case is that the Pre-emption Case No. 24 of 1980-1981 was filed by respondents 4 and 5 when the father of the petitioners, Jhaksu Singh, had purchased the land of Mauja Mali Harinagar, tauzi No. 558, thana No. 133, khata No. 99 khesras Nos. 767, 781, 782, khata No. 533 khesras Nos. 1163, 1266, 1267, 1302, measuring 9

kathas and 12 dhurs through registered sale deed, dated 21st December, 1980, the sale deed was registered on 9th January, 1980. During the pendency of the preemption application respondents 4 and 5 filed an application before the Deputy Collector, Land Reforms, Sadar, Khagaria for holding enquiry which was rejected by order, dated 1.12.1981. Against this order Misc. Case No. 14 of 1981-1982 was filed by respondents 4 and 5 before the Collector, Khagaria, that matter remained pending. In the meantime, the pre-emption case itself was rejected by order, dated 28th November, 1981. Petitioner's case is that no appeal was preferred by the respondents against the order passed in preemption case, but the Collector erroneously treated the Misc. Case No. 14 of 1980-1981 as an appeal and by a common order, dated 19th/24th May, 1982, he decided the appeal as well as the miscellaneous case. He allowed the miscellaneous case against which no revision was preferred by the petitioner. The reason has been given that a massive flood came in the area and the entire record of the case became traceless. Respondents 4 and 5 in whose favour the Misc. Case No. 14 of 1981-1982 decided. They also did not file any application for execution of sale deed in their favour u/s 16(3)(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as, "the Act"). After 17-18 years the respondents 4 and 5 have filed an application before the Collector, Khagaria. It has been registered as Misc. Case No. 18 of 1999-2000 for a direction to the petitioners to execute sale deed in their favour as their pre-emption application has been allowed by the appellate authority. The petitioners have filed this application against initiation of this proceeding stating that the proceeding is barred by limitation. u/s 16(3)(iii) of the Act it has been provided that the "if the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document or transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in order 21, rule 34 of the Civil Procedure Code, 1908, shall be, so far as may be followed".

2. Considering the fact that the Collector in his order, dated 24.5.1982, did not fix any period for executing a sale deed in favour of respondents 4 and 5 and also that respondents 4 and 5 slept over the matter for a long 17-18 years. Now they are not entitled to file any application for getting the sale deed executed in their favour under the provisions of 16(3)(iii) of the Act. According to the petitioners, the proceeding which is initiated by the Collector is barred under Articles 134 and 136 of the Limitation Act and also it has been stated that now the sale deed can be executed in a proceeding initiated under Order 21 Rule 34 of the Civil Procedure Code.

3. In reply to the submissions made by the petitioners, counsel for respondents 4 and 5 stated that the arguments advanced by the petitioners' counsel that the proceeding is barred by limitation is not sustainable and the Articles 134 and 136 of the Limitation Act has no application in the present case. He has placed his reliance on a decision reported in Sakuru Vs. Tanaji, , wherein it has been held

that "the provisions of Limitation Act apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi judicial tribunals or executive authorities, notwithstanding the fact that such bodies or those may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure".

4. Further it has been submitted that the Collector in his order has not fixed any time within which sale deed should have been executed. If it is not there, it cannot be said that any statutory period has been provided for execution of sale deed. Since no such period is provided in the act, nor any period was fixed by Collector, question of limitation does not arise. So far question of provision under Order 21 Rule 34 of the CPC is concerned, it will come into play only in case, when even after direction of authority the purchaser refrained to execute sale deed, even after expiry of the period so specified. Considering the fact that no such circumstances has arisen and the transferee has neither been directed to execute the sale deed nor he has referred to do so, order 21 rule 34 of the CPC has no application. The stand taken by the petitioner is premature and should be rejected.

5. Considering the fact that only a proceeding has been initiated whereby a direction might be issued in favour of the transferee to execute a sale deed unless there is a direction and a refusal by the transferee there is no application of Order 21 Rule 34 of the Civil Procedure Code.

6. Considering the arguments advanced by the parties, I am of the view that so far the prayer made by the petitioners regarding illegality of the order passed in Misc. Case No. 14 of 1981-1982 is concerned, it cannot be entertained, that order became final as the petitioners did not prefer any revision against that order. Rightly or wrongly whatever order was passed it should have been challenged by the petitioners but they did not do so as such no objection can be raised regarding the legality or illegality of that order. The arguments which have been advanced by the petitioners relating to the initiation of the proceeding vide Misc. Case No. 18 of 1999-2000 is concerned, for that the petitioner may file his show cause. I direct that the petitioners may raise all these points before the Collector, Khagaria, where the proceeding has been initiated. The Collector, Khagaria, will pass an order considering the arguments advanced by the petitioners. Filing of writ application by the petitioners, at this stage, is premature. He can move this Court after final order passed by the Collector, Khagaria. Accordingly, this application is dismissed.