

(2005) 04 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1732 of 2005

Bhim Sen Mahato

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16, 16(3)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules,
1963 — Rule 19
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34

Citation : AIR 2006 Jhar 105 : (2005) 3 JLJR 193 : (2006) 2 AIRJharR 600 :
(2005) 3 JCR 163

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.B. Mahata, for the Appellant; J.C. to S.C. (Land), for the
Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. The petitioner seeks a direction upon the respondents for the release of the amount of Rs. 19,800/- deposited in the Court of Land Reforms Deputy Collector, Saraikella in connection with Land Ceiling Case No. 1/2001-2002.

3. The facts of the case lie in a narrow compass. The petitioner purchased a piece of land comprising Plot No. 542 Khata No. 6 area 0.28 acre from Smt. Nanki Mahatani on a consideration of Rs. 18000/- by virtue of registered deed of sale dated 11.4.2000. One Pursuram Mahato of the same village filed an application u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 claiming transfer of land to him. He deposited the consideration amount along with 10% i.e. a total of Rs. 19800/- by treasury challan as required under the said provision. The Preemption case being

Land Ceiling Case No. 1/2001-2002 was allowed and the petitioner was directed to transfer the land in favour of the pre-emptor. The petitioner accordingly transferred the land in favour of the pre-emptor. Thereafter the petitioner filed an application for release/ withdrawal of the amount which was deposited by the said pre-emptor. It is contended by the petitioner that till date the amount has not been released in his favour, rather on application filed by the petitioner, he was informed by the Additional Collector, Saraikella vide letter dated 25.9.2004 that the application has been forwarded to the Secretary, Revenue and Land Reforms Department, Ranchi vide letter No. 334 dated 13.7.2004 for necessary guidelines. A copy of the said letter has been annexed as annexure-4 to the writ petition.

4. Section 16 of the said Act, makes restriction on future acquisition by transfer of the land. Sub-section (3) of Section 16 which is relevant here is quoted herein below :

"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 :

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision :

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted from land and possession thereof shall be restored to the transferor and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under Clause (1).

(iii) 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 of 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 Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed."

5. Admittedly, under the aforesaid provision the application filed by the pre-emptor was allowed and the petitioner was directed to convey the land in favour of the pre-emptor. The petitioner accordingly conveyed the land in favour of the pre-emptor. After conveying the land, the petitioner filed an application for the

release/withdrawal of the amount deposited by the pre-emptor. Instead of allowing the petitioner to withdraw the amount, the Additional Collector sought guidelines from the Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi. Rule 19 of the Bihar Land Ceiling Rules as adopted by the State of Jharkhand reads as under

"19. Application by co-sharer or a raiyat of adjoining land for transfer of land u/s 16(3).-(1) Application by a co-sharer of raiyat of adjoining land for transfer of land u/s 16(3) shall be in Form L.C. 13 and the purchase money together with a sum equal to ten percent thereof shall be deposited in the Treasury/Sub-treasury of the district within which the land transferred is situated.

(2) A copy of the Challan, showing deposit of the amount under Sub-rule (1) together with a copy of the registered deed, shall be filed along with the application in which also a statement to this effect shall be made.

(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgement due.

(4) The Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date to be specified in the notice and after giving the parties concerned a reasonable opportunity of showing cause, if any, and of being heard, shall by an order in writing, either allow the application in accordance with clause (iii) of Sub-section (3) of Section 16, or reject it.

(5) If the application is allowed under item (iii) of Sub-section (3) of Section 16 and the transferee is directed by the Collector by an order to convey the land in favour of the applicant by executing and registering a document of transfer, the applicant shall be required to pay the registration fee.

(6) Where the application is allowed and the transferee conveys the land in favour of the applicant u/s 16(3)(iii), the transferee shall be allowed to withdraw the money deposited by the applicant."

6. From bare perusal of the aforesaid provision, it is manifestly clear that after conveying the land in favour of the pre-emptor, the transferee shall be allowed to withdraw the money deposited by the pre-emptor. The Additional Collector, therefore, following the statutory rules, has sought guidelines from the Secretary, Revenue Department. Any guidelines issued by the Department will not override the statutory rules quoted herein above. The action of the Additional Collector is, therefore, wholly illegal and misconceived.

7. For the aforesaid reasons, this writ application is allowed and the concerned respondent is directed to allow the petitioner to withdraw the amount deposited by the pre-emptor in the aforementioned ceiling case.