
(2018) 06 JH CK 0064
In the Jharkhand High Court
Case No : Writ Petition 6561 of 2007

Bindu Mahto

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

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

Citation : (2018) 06 JH CK 0064

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : S.K. Sharma, Ram Chandra Sahu, Rahul Kamlesh, Ashish Kumar Thakur, Shekhar Kumar Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. S.K. Sharma, Advocate assisted by Mr. Ram Chandra Sahu, Advocate appearing for the petitioner.

2. Heard Mr. Rahul Kamlesh, A.C. to S.C.-II as well as Mr. Ashish Kumar Thakur, A.C. to S.C. (L. & C.) appearing for the respondent-State.

3. Heard Mr. Shekhar Kumar Sinha, counsel appearing for the private respondents.

4. This writ petition has been filed for the following reliefs:

a. That through the instant writ application, the petitioners pray before this Hon'ble Court for issuance of an appropriate writ/writs,

order/orders and/or direction/directions for quashing the order dated 23.05.2007 (Annexure-4) passed in Dhanbad Revision Case No. 43/2005 by the

Respondent No. 3.

b. For issuance of an appropriate writ for quashing the order dated 29.9.2005

(Annexure-5) passed in L.C. Appeal No. 6/2005 by the Additional Collector, Dhanbad (Respondent No.2) whereby and whereunder the order dated 1.12.1986 passed in L.C. Case No. 22/1986-87 and L.C. Case No.

21/1986-87 by the Land Reforms Deputy Collector, Chas has been set aside.

c. For issuance of further writ/order/direction restraining the Respondents to act in furtherance of the impugned orders dated 23.05.2007 (Annexure-

5) and 29.9.2005 (Annexure-6).â??

5. Counsel for the petitioners submits as under:

(a) The father of the petitioners namely, Jyoti Mahto was a raiyat in relation to portion of Plot Nos. 97, 795 and 796 in Khata No. 101 situated at

Mouza Dumra in the district of Dhanbad.

(b) He submits that co-sharer of the petitioner executed saledeed to transfer area of 0.25 decimal of Plot No. 795, 0.02 decimal of Plot No.796 and

0.14 decimal of Plot No. 97 of Khata No. 101 by registered sale-deed nos. 10169, 10170 and 10171 on 17.11.1986 whose registration was completed

on 08.01.1987.

(c) He further submits that the vendee of sale-deed no. 10170 is Gobind Mahto; vendee of sale-deed no. 10171 is Â Lakhiram Mahto and vendee of

10169 is Bhola Mahto, Gokul Mahto and Jeetan Mahto.

(d) Counsel for the petitioners further submits that Jyoti Mahto son of Ramu Mahto filed three applications under Section 16(3)(i) of the Bihar Land

Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act of 1961) before the Land Reform

Deputy Collector, Chas inÂ Dhanbad against the respective vendors and vendees after depositing 10% of the consideration amount which was

registered as L.C. Case No. 20 of 1986-87, L.C. Case No. 21 of 1986-87 and L.C. Case No. 22 of 1986-87. L.C. Case No. 20 of 1986-87 was filed

against Bhola Mahto, Jeetan Mahto and Gokul Mahto which was in relation to sale-deed No. 10169. L.C. Case No. 21 of 1986-87 was filed against

Gobind Mahto which was in relation to sale-deed No. 10170 and L.C. Case No. 22 of 1986-87 was filed against Lakhiram Mahto and others which

was in connection with sale-deed no. 10171.

(e) Counsel for the petitioners further submits that the instant writ petition is relating to sale-deed no. 10170 and saledeed no. 10171 and so far as sale-

deed no. 10169 is concerned, the same is the subject matter of another writ petition being W.P.(C) No. 5934 of 2007. He further submits that both

these cases were earlier tagged together but yesterday on their instance, W.P.(C) No. 5934 of 2007 has been de-tagged and the matter has been

adjourned. Further this particular case in relation to sale-deed no. 10170 and 10171 has been argued at length.

(f) The counsel further submits that the notices were issued to the opposite parties by the original authority and they appeared and thereafter, the

Land Reform Deputy Collector, Chas disposed of all the three cases vide single order dated 19.06.1990 passed in Land Ceiling Case No. 20 of 1986-

87 and the applications for pre-emption were duly allowed. Against this three appeals being L.C. Appeal No. 89, 90 and 91 all of 1990 were filed

which were dismissed by a single order. Against the appellate order revision petitions were filed being L.C. Revision No. 151/91 and 152/91 which

were also dismissed.

(g) Against this, Bhola Mahto and Gobind Mahto filed writ petitions being C.W.J.C. No. 3494 of 1994(R) and C.W.J.C. No. 3495 of 1994 (R) which

were in relation to sale-deed nos. 10169 and 10170 but so far as the matter in relation to the sale-deed no. 10171 which was purchased by Lakhiram

Mahto is concerned, no writ petition was filed and accordingly, the order in relation to sale-deed no. 10171 became final.

(h) He submits that the writ petition being C.W.J.C. No. 3494 of 1994 (R) and C.W.J.C. No. 3495 of 1994 (R) were disposed of by a common

order by this Court on 01.10.2002 and the matter was remanded back to the Additional Collector, Dhanbad with a direction that the Additional

Collector will get it physically verified as to whether the land of the petitioners are adjoining the land sought to be pre-empted, he will take a note

that the words adjacent and adjoining are quite different words having different meanings.

(i) He further submits that pursuant to the said order passed in the aforesaid two writ petitions, Additional Collector, Dhanbad reopened all the three

cases and re-numbered the appeal as L.C. Appeal No. 6 of 2005. Thereafter, by this order the Additional Collector decided that the petitioners are not

adjoining raiyat of the property and accordingly, dismissed the case of the petitioners. The counsel for the petitioners further submits that the writ

petitions were related to only two sale-deeds but by this order, all the three sale-deeds were taken into consideration and therefore, the order in

relation to sale-deed no. 10171 is wholly without jurisdiction as the earlier order in relation to sale-deed no. 10171 had already attained finality in

connection with which no writ petition was filed as explained above.

(j) Counsel for the petitioner submits that against the common order dated 29.09.2005, the father of the petitioners preferred revision before the

Member Board of Revenue, Jharkhand which was dismissed vide order dated 23.05.2007 holding that the petitioners are neither the adjoining raiyat of

the vended property nor they are the cosharer of the disputed property and the said authority further held that the property in relation to Plot No. 796

has been recorded as 'Ghar Angan' in the Khatiyan and accordingly, the provisions of Section 16(3)(i) of the Act does not apply.

(k) Counsel for the petitioners by assailing the impugned orders submits that the impugned order so far as they relate to sale-deed no. 10171 are ex

facie illegal in view of the fact that Lakhiram Mahto never challenged the earlier orders which were against him. He further submits that so far

as other two sale-deeds are concerned, only they were the subject matter of the writ petitions being C.W.J.C. No. 3494 of 1994(R) and C.W.J.C. No.

3495 of 1994 (R) and accordingly, the impugned orders are fit to be set-aside so far as the sale-deed no. 10171 is concerned.

(l) Counsel for the petitioners has advanced the arguments at length and by referring to the impugned orders he submits that the petitioners are the co-

sharers of the property and also the adjoining raiyat of the property and he has also submitted that so far as Plot No. 97 is concerned, it has been

recorded in the impugned order dated 29.09.2005 that the adjoining plot of this property is the purchased property of the purchaser but there is no

material on record to show as to by which deed the same was purchased by the purchasers of the property.

(m) Counsel for the petitioners submits that the purchasers of the property were neither the co-sharers of the property nor they were the adjoining

raiya and infact, the father of the petitioners was the co-sharer as well as the adjoining raiyat of the property involved in this case and therefore,

the impugned orders are fit to be set-aside.

6. Counsel for the private respondents, on the other hand, during the course of

argument has submitted that although the sale-deed no. 10171 was not the subject matter of earlier two writ petitions, but the parties after remand have fully participated in the proceedings and therefore, it is not open to them to say that the order in relation to the sale-deed no. 10171 has been wrongly passed.

7. He has further submitted that the impugned order has been passed pursuant to the order of remand passed by this Court and thereafter, there has been an inspection in connection with the property in terms of the order passed by this Court and upon inspection, it was found that the petitioners are not the adjoining raiyat of the property.

8. He submits that there is no illegality in the impugned orders and accordingly, the same do not require any interference. He also submits that there is nothing on record to suggest that the petitioners were the co-sharer of the property and on this count also, the impugned orders do not require any interference. 9. Counsel for the respondent-State, on the other hand, submits that so far as the property in relation to the sale-deed no. 10171 is concerned, they have nothing to say but so far as the sale-deed no. 10170 is concerned, the petitioners have failed to bring their case within the requirements of Section 16(3)(i) of the aforesaid Act of 1961 and accordingly, their claim of pre-emption has been rightly rejected.

10. After hearing the counsel for the parties and after considering the materials on record, this Court is inclined to partly allow the writ petition only in connection with the sale-deed no. 10171 and so far as the case relating to sale-deed no. 10170 is concerned, this Court is inclined to reject the contention of the petitioners on account of the following facts and reasons:

(a) So far as sale-deed no. 10171 is concerned, the same was purchased by Lakhiram Mahto and in connection with this property in the earlier round of litigation, the orders were passed in favour of the petitioners. However, Lakhiram Mahto did not challenge the order which was passed in favour of the petitioners and did not file any writ petition challenging the order. In such circumstances, only two writ petitions were filed i.e. in relation to sale-deed no. 10169 and sale-deed no. 10170, which ultimately culminated into an order of remand wherein this Court had directed the authority to make a local inspection in connection with the claim of the petitioners being the adjoining raiyat of the property. In such circumstances, the authorities could

not have passed any order in relation to the sale-deed no. 10171 even if it is assumed that the parties duly participated before the authority below in relation to sale-deed no. 10171 also.

(b) From the perusal of the impugned order, it appears that the Additional Collector had reopened all three proceedings in connection with sale-deed nos. 10169, 10170 and 10171, although the order of remand was arising out of proceedings in connection with the sale-deed no. 10169 and sale-deed no. 10170 only. In such circumstances, the impugned orders so far as they relate to sale-deed no. 10171 are wholly without jurisdiction and are accordingly, set-aside.

(c) So far as sale-deed no. 10170 is concerned, it appears that the High Court had remanded the matter for the purposes of local inspection in connection with the boundary of the vended property. From the perusal of the records of this case, it appears that the local inspection was conducted and it was found that towards the south of the vended property it was plot no. 794 having total area 39 decimal, out of which 19 ½ decimal was purchased by the purchaser of the vended property as back as in the year, 1957 and further towards the south of Plot No. 794, the property was in possession of the petitioners.

(d) Accordingly, the Circle Officer has come to the conclusion that the property of the petitioners was away from being the adjoining raiyat of the vended property.

(e) This Court does not find any material on record which is contradictory to the aforesaid spot inspection done by the Circle Officer alongwith Additional Collector and accordingly, the claim of the petitioners that they were the adjoining raiyat of the property is hereby rejected.

(f) Further, the Circle Officer had also recorded that Plot No. 94 was surrounded by Plot Nos. 96, 103 and 104 and had recorded that the same was the purchased property of the vendors of the property involved in this case. This finding of the Circle Officer has not been disputed, challenged or controverted by the writ petitioners at any stage and even in the pleadings of this writ petition this fact has not been controverted.

(g) In such circumstances, this Court does not find any illegality and perversity in connection with the local inspection which was conducted by the Circle Officer and Additional Collector holding that the petitioners are not the

adjoining raiyat of the vended property.

(h) So far as the claim of the petitioners that they are the co-sharers of the property is concerned, the same is also rejected in view of the fact that the order of remand which was passed by this Court was only in relation to the inspection so as to ascertain as to who is the adjoining raiyat of the property and accordingly no further point was open for consideration by the authority below. Otherwise also, there is no material on record to hold that the petitioners are the co-sharers of the vended property.

(i) Further, the claim of the petitioners that the property in connection with the Plot No. 796 is Gharbari and therefore, homestead property and the provisions of this Act would apply even to such properties. This finding,Â does not help the petitioners in any manner because the petitioners have failed to establish that they were the co-sharers orÂ the adjoining raiyat of the vended property. The condition precedent for establishing a case under Section 16(3)Â of the aforesaid Act is that the pre-emptor should be either the co-sharers or the adjoining raiyat of the vended property. In view of the aforesaid finding that the petitioner is neither the co-sharer nor the adjoining raiyat of the vended property, the nature of the land in connection with the Plot No. 796 has no bearing in the matter.

11. Under the aforesaid facts and circumstances, this writ petition is partly allowed in connection with sale-deed Â Â no. 10171 and dismissed in connection with sale-deed no. 10170.