

(1970) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 667 of 1968

Deo Nandan Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-11-1970

Acts Referred:

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

Citation : AIR 1971 Patna 426

Hon'ble Judges : Sarwar Ali, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Kailash Roy and Prabha Shankar Mishra, for the Appellant;
Rameshwar Nath Rai and Ali Mohammad, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—The prayer of the petitioner in this application is that the order of the Additional Member, Board of Revenue, dated the 1st, June, 1968, a copy of which is Annexure "4" to the application, should be called up and quashed by issue of an appropriate writ under Articles 226 and 227 of the Constitution. The relevant facts are as follows :--

2. On the 29th December, 1964, Ram Deo Pandit (Respondent No- 2) took two sale deeds from Gaya Thakur, Ram Ekbal Thakur and Rup Narain Thakur (Respondents 3 to 5); one for Rs. 1500/- in respect of 7 kathas 16 dhurs of land in village Sisai comprised in plot No. 975 (3 kathas 15 dhurs), and plot No. 976 (4 kathas, 1 dhur), and the other for Rs. 300/- in respect of 1 khata, 3 dhurs forming the northern portion of plot No. 770 in the same village. Plots Nos. 975 and 976 lie on the northern boundary of plot No. 977 which is recorded in the name of the petitioner's father, Pandit Suchit Mishra. The petitioner had also obtained on the 3rd June, 1958, a Zarpeshgi for Rs. 1550/- from Gaya Thakur (Respondent No. 3) in respect of 4 kathas, 10 dhurs in plot No. 976, besides portions of two other plots, namely plot Nos. 660 and 965, redeeming thereby an

earlier Zarpeshgi of the year 1953 in respect of the same area in plot No. 976 and a portion of plot No. 660. This Zarpeshgi was subsisting at the time of the purchase made by Ram Deo Pandit (Respondent No. 2) on the 29th December 1964. The petitioner had also purchased on the 6th July, 1959, 1 katha out of the southern portion of plot No. 770 from Respondents Nos. 3 to 5 for a consideration of Rs. 300/- in the name of his son Umeshanand Mishra.

On the 11th March, 1965, the petitioner filed an application u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land) Act, 1961 (Bihar Act 12 of 1962), hereinafter to be referred to as the "Act", for being put in possession of the land covered by the two sale deeds of the 29th December, 1964, in favour of Ramdeo Pandit (Respondent No. 2), and for an order directing him (Respondent No. 2) to convey the said land in his favour. This petition was allowed by the Sub Divisional Officer Chapra, by his order dated the 13th July, 1966, a copy of which is Annexure "1" to the writ application, and that was also upheld by the Additional Collector by his order the 2nd February, 1968, a copy of which is Annexure "3" to the writ application. On an application u/s 32 of the Act, however, the Additional Member, Board of Revenue, (Respondent No. 6) set aside the orders of the Subordinate Revenue authorities and rejected the application u/s 16 (3) of the Act on the ground that it was not entertainable at all, since, the purchase money as contemplated by the proviso to Clause (i) of Section 16 (3) of the Act was not deposited by the petitioner.

3. Section 16 (3) of the Act is in the following terms;--

(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 the registration of the document of 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 per cent, 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 the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten per cent, of the purchase-money out of the deposit made under Clause (i).

(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." It will be seen that the application envisaged by Clause (i) of the sub-section has to be filed in the prescribed manner for transfer of the land to the applicant on the same terms and conditions as are contained in the deed of transfer which forms the cause of action for the application. It is also requisite that the application must be accompanied by a chalan showing the deposit as prescribed in Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963, in the Government Treasury, of the purchase money together with a sum equivalent to ten per cent, thereof, and it is only on such deposit having been made by a competent person that he becomes entitled to be put in possession of the land, irrespective of the fact that his application under Clause (i) is pending for decision.

4. In the instant case, the admitted position is that the petitioner had filed a single application in respect of the land covered by both the sale deeds of the 29th December, 1964, and had appended thereto a chalan showing deposit in the Government Treasury of an amount of Rs. 430/- only. Out of the said amount, Rs. 250/- was indicated to be the purchase money and the balance of Rs. 180/- represented the sum equal to ten per cent, of Rs. 1800/-, the aggregate of the consideration money of both the sale deeds of the 29th December, 1964. As already stated, the Additional Member, Board of Revenue has taken the view that this was not a deposit of the purchase money as contemplated by the proviso to Clause (i) of Sub-section (3) of Section 16 of the Act.

5. Mr. Kailash Roy appearing in support of the application conceded that if the dues of the petitioner under the Zer-peshgi bond of the 3rd June, 1958, namely the sum of Rs. 1550/- were to be left out of consideration, then the deposit of Rupees 430/- made by the petitioner, as indicated above, cannot be said to be a valid deposit as contemplated by the proviso to Clause (i). But learned counsel contended that the outstanding dues of the petitioner under the said Zer-peshgi bond have got to be taken into account, and if that is done, then the deposit which the petitioner has made must be deemed to be a valid deposit under the law. Elaborating this contention Mr. Roy argued that if the petitioner had deposited the entire amount of Rs. 1950/- (Rs. 1800/- plus ten per cent, thereof), then respondent No. 2 would have had to pay back to him the sum of Rs. 1550/- out of the aforesaid sum of Rs. 1950/- in satisfaction of the Zer-peshgi deed. According to learned Counsel, such a deposit, followed by such a repayment, would only be piling unreason upon technicality. Learned counsel, therefore, contended that the expression "purchase-money" which has been used in the proviso to Clause (i) must be construed to mean the money which the applicant u/s 16 (3) is required to pay to the vendee (Respondent No. 2 in the present case) for the purpose of obtaining the reconveyance of the land from him

as contemplated by Clause (iii). Learned counsel has further contended that the expression "purchase-money" is not included within the expression "terms and conditions" contained in the sale deed which occurs in Clause (i).

6. In my opinion, there are several reasons why the argument of Mr. Kailash Roy cannot be accepted. It is quite clear upon the terms of Section 16 (3) that the question of reconveyance as contemplated by Clause (iii) cannot arise unless the application under Clause (i) is entered into, and that in order that the application can be entertained, all the requirements of Clause (i), including the one relating to the deposit as envisaged in the proviso thereof, must be fulfilled. Therefore, the purchase-money referred to in the proviso to Clause (i) must obviously have reference to the consideration money, as mentioned in the deed of transfer, as envisaged in the said clause.

Mr. Ramchshwar Nath Rai, who appeared before us on behalf of respondent No. 2, drew our attention to both the original sale deeds of the 29th December, 1964, and pointed that there is no mention therein of any Zerpeshgi dues of the petitioner under the bond of the 3rd June, 1958, or of any encumbrance upon the vended plots of land. Mr. Kailash Roy did not challenge this fact, but urged that on the 29th December, 1964, itself some other document was executed by the mortgagor making his vendee liable for the Zerpeshgi dues. It is, however, impossible to take notice of any such collateral transaction between the parties while dealing with an application u/s 16 (3) of the Act, as Clause (i) makes it clear that the application contemplated therein has to be for transfer of the vended land on the same terms and conditions as are to be found in the transfer deed. As the sale deeds of the 29th December, 1964, stand, it is manifest that there is no stipulation therein for satisfying the Zerpeshgi dues of the petitioner. In other words, what Ram Deo Pandit (Respondent No. 2) had purchased under his first sale deed of the 29th December, 1964, was the equity of redemption in respect of 4 kathas, 1 dhur of plot No. 976, besides the absolute title of Respondents 3 to 5 in the area of 3 kathas, 15 dhurs of plot No. 975. It was this interest which was valued at Rs. 1500/- under the first sale deed of the 29th December, 1964. Therefore, in order to become entitled to the right of equity of redemption in one of the plots covered by that sale deed, the petitioner was liable to deposit the entire amount of Rs. 1500/- plus ten per cent, thereof as required by the proviso to Clause (i). It is impossible to accept the contention of Mr. Roy that the purchase money mentioned in the first sale deed of the 29th December, 1964, namely Rs. 1500/-, did not constitute a term or condition of the said sale deed.

Quite apart from the plain language of Clause (i), it was pointed out by a Bench of this Court in *Rarnchabila Singh v. Ram-sagar Singh* 1968 PLR 279, at p. 282 that the amount of consideration money in a sale deed is a term of the document and that the legislature has clearly indicated that the transfer applied for has to be made on the same terms and conditions as contained in the deed of transfer which is the basis of the application. Purchase money cannot cease to be a term

of the sale deed merely because it has been referred to in the proviso, and not in the main body, of Clause (i). Reading the clause along with the proviso, it is manifest that the legislature has enlarged the scope of the expression "terms and conditions" contained in the sale deed with respect to the consideration money, by providing that it has to be ten per cent, over and above the purchase money as mentioned in the deed in order to constitute a valid deposit to make the application for reconveyance entertainable by the Collector. The legislature did not intend that the Collector should embark upon an elaborate inquiry as to what is the not consideration money for the sale deed, The Supreme Court also has taken a similar view in *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others*, etc., by observing at p. 252 that.

"The purpose of prescribing that a copy of the registered deed should accompany the application is that if such a copy is before the Collector, there would be no scope for any controversy that the land is transferred to the purchaser, about its area and location, and the terms and conditions of the sale including the sale price."

In other words, the sale price is deemed to have been included in the expression "terms and conditions" of the sale deed in question.

7. The argument of Mr. Roy that for the purpose of ascertaining the validity of the deposit envisaged in the proviso to Clause (i), the dues of the petitioner under the Zerpeshgi bond of the 3rd June 1968 must be taken into account, postulates that before deciding whether the application for reconveyance is fit to be entertained or not, the Collector must embark upon an inquiry as to whether the consideration money mentioned in the sale deed, of which a copy is made available to him along with the application, is the real consideration money for the sale deed or only a fictitious or inflated amount has been incorporated therein. Quite clearly, such an inquiry is not contemplated under the law, otherwise in every case it would be open to the applicant to make a deposit of a smaller amount saying that the consideration money mentioned in the sale deed, a copy of which he has filed, is unreal or fictitious, and in that case before entertaining the application, the Collector will have to call upon the parties to adduce evidence before him to enable him to decide whether the assertion made by the applicant is acceptable or not. It is manifest that such an inquiry is not contemplated and that the Collector must decide the question of maintainability of the application with reference to the validity of the deposit in accordance with the apparent tenor of the copy of the sale deed accompanying the application.

8. Mr. Roy asked us to consider the purpose of making the deposit under the proviso to Clause (i), namely, to render the applicant entitled to be put in possession of the land as contemplated by Clause (ii) and to obtain reconveyance as contemplated by Clause (iii). The argument is that in order that the Collector might be in a position to put the applicant in possession of the land, he must consider whether the deposit which has been made is or is not sufficient for that purpose, and, therefore, in a case in which the vended land is subject to some

usufructuary mortgage, the applicant must make such a deposit as would be sufficient to enable the Collector to put him in possession of the land. Therefore, the petitioner in the present case was entitled to retain with himself the amount of the Zer-pcshgi bond of the 3rd June, 1958, and to make a deposit of the balance, in addition to the statutory solatium of ten per cent. The argument further is that in the document of transfer which the petitioner would be entitled to receive from the vendee, the consideration money can in no case be the same as contained in the sale deed mentioned in Clause (i), because even where the land is not subject to any encumbrance, the document of transfer envisaged in Clause (iii) has got to show the consideration money as an amount ten per cent, in excess of the consideration money shown in the sale deed referred to in Clause (i). But the fallacy in this argument is that the vendee, who in the present case is respondent No. 2, cannot be called upon to convey a higher title to the petitioner than what he has himself purchased under the sale deeds of the 29th December, 1964. As I have already shown, under the first sale deed of the 29th December, 1964, respondent No. 2 had merely purchased the equity of redemption so far as plot No. 976 under his own sale deed was subject to encumbrance under the Zerpeshgi bond of the 3rd June, 1958, assuming that to be subsisting or valid, upon which we express no concluded opinion. And yet he would be required to convey absolute title to the petitioner or to reconvey the land to him free from encumbrance. And that would be so in spite of the fact that upon the very terms of Clause (i), the application of the petitioner was for transfer of the land to him on the very terms and conditions contained in the sale deed of the 29th December, 1964. It will also be observed that Clause (ii) merely contemplates that the applicant who has made a valid deposit becomes entitled to be put in possession of the land. Therefore, where the land is subject to an usufructuary mortgage, the petitioner, who has made a valid deposit, can only obtain the right of being put in possession, meaning thereby that he becomes entitled to redeem the subsisting encumbrance and to obtain actual possession after redemption. In the document of reconveyance contemplated by Clause (iii), the recital as to consideration would naturally be the purchase money as mentioned in the sale deed, with a further recital that an additional amount of ten per cent, thereof has been deposited as required by the proviso to Clause (i).

9. I may also observe that even the petitioner's stand is not consistent in this respect. He made the deposit of Rs. 430/- on the footing that it included Rs. 180/- representing ten per cent, of Rs. 1800/-, but upon his own case Rs. 1800/- was not the purchase money. The purchase money, according to him, was only Rs. 250/- and, therefore, the ten per cent, amount would have been Rs. 25/- only. The petitioner also seems to have proceeded upon the footing that the equity of redemption which respondent No. 2 had purchased in plot No. 976 was of no value, since, the Zerpeshgi bond in favour of the petitioner was for Rupees 1550/-. If the argument of Mr. Roy were to prevail, then for executing the deed of reconveyance under Clause (iii), nothing was payable to him by the petitioner on account of the purchase money, and on the contrary, the petitioner was

entitled to receive a further sum of Rs. 50/- from respondent No. 2. It is manifest that it would be absurd to take such a view. After all, the equity of redemption in a property has some value and, therefore, the real price of the land of which the petitioner seeks to obtain a reconveyance was Rs. 1500/- plus Rs. 1550/-, and not Rs. 1500/- minus Rs. 1550/- as suggested on behalf of the petitioner. Thus from whatever angle the matter is looked at, it is impossible to hold that the deposit of Rs. 430/- which the petitioner has made in the present case was a valid deposit in terms of the proviso to Clause (i).

10. A question has also been raised as to whether a single application is maintainable for obtaining reconveyance of the land covered by both the sale deeds of the 29th December, 1964. Mr. Rameshwar Nath Rai pointed out that apart from the fact that Plot No. 975 was not subject to encumbrance under the Zerpeshgi bond of the 3rd June 1958, the other sale deed, namely one for Rs. 300/- was in respect of a portion of Plot No. 770, which was free from encumbrance, and the deposit of Rs. 250/- towards the purchase money, which the petitioner made at the time of making his application, was not sufficient even to cover the consideration money for the second sale deed of the 29th December, 1964. The grievance of respondent No. 2 is that by making a single application for reconveyance of both the sale deeds of the 29th December, 1964, the petitioner has sought to shift a portion of the encumbrance under the Zerpeshgi bond of the 3rd June, 1958, upon Plot Nos. 976 and 770, both of which are free from such encumbrance. In my opinion, there is considerable force in this contention of learned counsel for respondent No. 2.

11. Realising the difficulty in the way of the petitioner, Mr. Kailash Roy suggested that the whole of Rs. 430/- should be treated as a valid deposit for the purpose of obtaining a reconveyance of the land covered by only the Second sale deed of Rupees 300/-. He contended that the smaller claim which the petitioner is thus making cannot fail merely because his larger claim cannot succeed under the law. Since, however, the matter was not canvassed before the Revenue authorities on this footing, it is impossible for this Court dealing with a writ application to treat the entire deposit, as valid for the purpose of the sale deed of Rs. 300/-, particularly in view of the fact that out of the sum of Rs. 430/-, a sum of Rs. 250/- was earmarked as being a deposit towards the purchase money. It is impossible to proceed upon an entirely new basis by treating the deposit as consisting of Rs. 300/- towards the purchase money under the second sale deed of the 29th December, 1964, and the balance as constituting a deposit in excess of ten per cent, thereof, as contemplated by the proviso to Clause (i). A totally new case of this kind cannot be permitted to be raised for the first time in a writ application.

12. For the foregoing reasons, I have come to the conclusion that the petitioner is not entitled to any relief. The application fails and is, accordingly, dismissed with costs payable to respondent No. 2. Hearing fee Rs. 100/-.

Sarwar Ali, J.

13. I agree.