

(1995) 01 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3732 of 1983

Deonarain Roy

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

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

Citation : AIR 1996 Patna 145

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : Bhupendra Narain Yadav and Shishu Kumar Sinha, for the Appellant; B.P. Verma, Standing Counsel (C) and V.B. Ambastha, J.C. to S.C. (C), for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—This application under Articles 226 and 227 of the Constitution of India is directed against the order dated 10-12-1979 (Annexure 2) passed by the Land Reforms Deputy Collector in Case No. 19 of 1979, allowing the application of respondent No. 5 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the appellate order dated 19-5-1980 (Annexure 3) "passed by the Additional Collector, Hajipur in Ceiling Appeal No. 71 of 1979-80 and the order dated 27-6-1983 (Annexure 4) passed by the learned Member, Board of Revenue, Bihar, in Case No. 166 of 1980.

2. To appreciate the case of the petitioner, it is necessary to narrate the undisputed facts of the petitioner's case in brief. The petitioner purchased a plot of land measuring 20 decimals bearing plot No. 465 of Khata No. 161 for a consideration of Rs. 3,000/- as per registered sale-deed executed on 6-3-1979 by respondent No. 6. (According to the petitioner, the land in question is a Bhit (homestead) land and he purchased it for the construction of "dalan". Respondent No. 5 filed an application before the Land Reforms Deputy Collector,

u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter mentioned as "the Act") for enforcement of his right of pre-emption contending that he was an raiyat of the adjacent plot of land. The application u/s 16(3) was filed beyond the period of limitation of 90 days as prescribed u/s 16(3) of the Act and was barred by ten days. Respondent No. 4, along with the application u/s 16(3) of the Act also filed an application praying for condonation of delay. The Land Reforms Deputy Collector admitted the application keeping the question of limitation open, to be considered at the time of hearing of the application on merit. The petitioner, after receipt of notice from the Land Reforms Deputy Collector, filed objection. The Land Reforms Deputy Collector, after hearing the petitioner and Respondent No. 5, by the impugned order dated 10-12-1979, condoned the delay in filing the application and allowed the application of Respondent No. 5. The petitioner impugned the said order dated 10-12-1979 in an appeal registered as Ceiling Appeal No. 71 of 1979- 80, before the Collector, Hajipur. The Additional Collector, Hajipur, after hearing the parties by order dated 19-5-1980, dismissed the said appeal. The petitioner, thereafter preferred a revision application before the Board of Revenue, which was registered as Case No. 166 of 1980. The learned Member, Board of Revenue, by the impugned order dated 27-6-1983, dismissed the said revision application. The petitioner has, thereafter, approached this court in this writ petition.

3. I have heard Mr. Bhupendra Narain Yadav, learned counsel for the petitioner and Mr. B. P. Verma, learned Standing Counsel (Ceiling) for the State, learned counsel for Respondent No. 5 appeared in course of hearing on 22-12-1994, and prayed for time for a period of three weeks to file affidavit-in-opposition. By order dated 22-12-1994, the prayer was allowed. But neither the affidavit-in-opposition has been filed on behalf of Respondent No. 5, nor the counsel on his behalf has appeared today.

4. In assailing the impugned orders, the learned counsel for the petitioner has made the following submissions :--

(i) It is not disputed that the plot of land, purchased by the petitioner by a registered sale-deed dated 6-3-1979 is home-stead land and as such provision of Section 16(3) of the Act has no application.

(ii) No notice as provided under Rule 19 of the Bihar Land Ceiling Rules, hereinafter referred to as the Rules, having been served by Respondent No. 5 on the petitioner and his vendor, the proceeding is vitiated for non-compliance of the mandatory provisions of the statutory Rules.

(iii) The Land Reforms Deputy Collector has condoned the delay in filing the application arbitrarily without application of mind.

5. Learned Government Advocate has drawn my attention to the decision of this court in the case of Hali Narayan Pandey v. State of Bihar, reported in 1994 (1) BLJ 281. In paragraph 10 of the said decision, this court amongst others held -

"The purpose of pre-emption is evidently to prevent fragmentation. Only a co-sharer of raiyat or raiyat of adjoining land can exercise his right to pre-emption. Such right can be exercised only by a raiyat who in view of its definition is primarily a person who has acquired right to hold and for the purpose of cultivation. A land which is not capable of cultivation and thus not a raiyati land, should not normally be the subject-matter of a proceeding u/s 16(3) of the Act."

6. I have considered the submissions made by the learned counsel for the petitioner and the submissions made by the Government Advocate and perused the impugned orders and other materials placed before me. I find that the Land Reforms Deputy Collector has acted illegally in admitting the application filed by respondent No. 5 u/s 16(3) of the Act without first considering the application for condonation of delay and passing order thereon. Unless delay in filing thereof is condoned, the application barred by limitation could not have been admitted.

7. Free transferability of property is the general rule and restriction on free transfer-ability of property is the exception. To achieve some aims and objects, the provision of Section 16(3) of the Act has been inserted therein as an exception to the general rule of free transferability of land under certain facts and circumstances. As already observed, it has been held in the case of Hari Narayan Pandey (supra) that the purpose (aims and objects) of Section 16(3) of the Act is to prevent fragmentation of land which is capable of cultivation. As such, an applicant seeking to enforce his right of pre-emption provided u/s 16(3) of the Act, besides establishing that he is the raiyat of the land adjacent to the land sold, must also establish that the plot of land sold to the third party is capable of cultivation and that the sale thereof to the third party results in fragmentation of the agricultural holding as contemplated under the law. The purpose of Section 16(3) of the Act being prevention of fragmentation of agricultural holding, in disposing of an application u/s 16(3) of the Act, it is obligatory on the part of the Land Reforms Deputy Collector as well as the appellate and revisional authorities below to consider and decide as to whether the sale of the plot of land results in fragmentation of agricultural holding or not. On perusal of the impugned orders, I find that the application of respondent No. 5 filed u/s 16(3) of the Act has been allowed simply because he claims to be a raiyat of the plot of land adjacent to the land sold. None of the authorities below has at all considered whether the sale of the plot of land resulted in fragmentation of agricultural holding or not. Non-consideration of the aforesaid essential factors has vitiated the impugned decisions.

In the instant case, the petitioner's statement on oath that the plot of land purchased by him is a homestead land and the purchase thereof is for the purpose of construction of Dalan has not been disputed. As such, in view of the decision of this Court in the case of Hari Narayan Pandey 1994 (1) BLJ 281 (supra), the provision of Section 16(3) of the Act does not ordinarily apply to the sale of the plot of land in question.

8. I find force in the submission of the learned counsel for the petitioner that

delay in filing the application u/s 16(3) of the Act has been condoned arbitrarily without application of mind. The Land Reforms Deputy Collector has condoned the delay holding that it became clear from the circumstances that obtaining certified copy of the disputed sale-deed by the applicant within six days of the registration signified that the applicant was very vigilant but due to special circumstances, he could not file the application in time. Merely because the respondent No. 5, the applicant, obtained the certified copy of the sale-deed in respect of the plot of land within six days of the registration thereof, cannot perse give rise to presumption that he was vigilant and but for illness, he would have filed the application u/s 16(3) of the Act in time. It might be that after obtaining the certified copy, the respondent No. 5 did not make up his mind or could not collect the consideration money, during the period of limitation. Before condoning the delay, the Land Reforms Deputy Collector ought to have applied his mind to assertion as to whether the nature of illness from which the applicant was suffering, had the effect of incapacitating him completely from depositing the consideration money and submitting the application u/s 16(3) of the Act within the stipulated period. Bald statement that due to illness the applicant could not take steps and filing of a certificate of the Doctor in support thereof, was not sufficient. The applicant was to satisfy that due to such illness he was completely incapacitated in taking steps during the stipulated period. The petitioner's averment in paragraph 8 of the writ petition that at the material time, respondent No, 5 had three full adult brothers and major son living as the members of joint family, has not been disputed. As such, if, because of illness, the respondent No. 5 himself was unable to make application during the stipulated period, although he was ready and willing to make an application u/s 16(3) of the Act, he would, in ordinary course, deposit the consideration money and file the application through his brother or son, in time.

9. According to the petitioner, for the first time he received notice of the application u/s 16(3) of the Act from the court vide Annexure 1. This averment of the petitioner has not been denied by the Respondents. As such, it may be presumed that respondent No. 5 did not send a copy of the application in compliance with the mandatory provisions of Sub-rule (3) of Rule 19 of the Rules. On perusal of both the appellate order and the order passed by the revisional authority, I find that both the appellate and revisional authorities have committed manifest errors of law apparent on the face of the records, in arbitrarily affirming the order of the Land Reforms Deputy Collector without applying their minds to the apparent illegalities in the order.

10. For the reasons stated above, the impugned orders dated 10-12-1979 (Annexure 2), 19-5-1980 (Annexure 3) and 27-6-1983 (Annexure 4) passed by the Land Reforms Deputy Collector, the Additional Collector and the learned Member, Board of Revenue, Bihar, respectively, are set aside, and this petition is allowed. I make no order as to cost.