

(2014) 01 PAT CK 0083
In the Patna High Court
Case No : C.W.J.C. No. 2069 of 2004

Dhanpato Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Contract Act, 1872 — Section 23

Citation : (2014) 2 PLJR 358

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Mrigendra Kumar and Ms. Kusum Kumari, Advocate for the Appellant; Nawal Kishore Singh, Jitendra Nath Tiwary for the Respondents No. 5, 6, 7, 9 and 11, Mr. Ajay and Ms. Meenu Kumari for the State, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The petitioners are vendees/purchasers, whose purchase has been sought to be pre-empted by private respondents No. 5 to 11. Private respondent No. 12 is the vendor. All parties have appeared and have been heard and with their consent, this writ petition is being disposed of at this stage itself. The pre-emption application of private respondents No. 5 to 11 was allowed by the Sub-Divisional Officer, Siwan acting as the Collector u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short "the Ceiling Act"). On appeal by the petitioners, who were vendees/purchasers, the Collector of the district allowed the appeal and rejected the pre-emption application. The matter was then carried to the Board of Revenue by the pre-emptor and their pre-emption application was allowed. Thus, the vendees/purchasers having lost are before this Court challenging the order of the Board of Revenue, which affirms the order of the Sub-Divisional Officer at the first instance allowing the pre-emption.

2. On behalf of the petitioners primarily three contentions have been raised. The first contention was that the document was registered in the year 1968. Pre-emption application was filed in 1965 itself. Thus, it was invalid and the application ought not to have been considered. The second contention was that the joint pre-emption application cannot be filed. The pre-emption application was, in fact, filed by six persons and it was a joint preemption application. His third contention was that the pre-emption has to be allowed as a whole and not in part; inasmuch as the sale-deed contained 10 dhurs of land of another place in respect of which the pre-emptors claimed no privilege situation.

3. On the other hand, on behalf of private respondents 5 to 11, who are the pre-emptors, it is submitted that the assertions on behalf of the petitioners are misconceived. The document was registered in December, 1964 and as such the pre-emption application in March, 1965 was in time. It was then submitted that the pre-emption application was filed by no stranger. The six persons", who had jointly filed pre-emption application, were descendants from one Ranjee Singh. Pre-emptors Raj Keshwar Prasad Singh and Dwarika Prasad Singh were sons of late Ramjee Singh. The other two were their sons and the last two were their wives. Thus, it was one big family that was pre-empting and the pre-emption was in respect of a touzi, in which they were all co-sharers alongwith vendor.

4. So far as the plea that pre-emption as a whole is to be allowed and not in part and that the transfer contained 10 dhurs of land at Mirganj of another district is concerned, it is pointed out by the pre-emptors that the sale-deed was in respect of over 16 bighas of land and 10 dhurs at Mirganj was purposely included therein to defeat the right of pre-emption accruing to any person. Compared to 16 bighas 10 dhurs would be less than 0.15% of the total land being transferred. That was clearly an- attempt to circumvent the law and cannot be taken note of.

5. Having considered the matter, in my view, this is one of the cases where the pre-emptors must succeed. Coming to the issue of registration, the petitioners contend that the sale-deed in their favour, though executed on 5.12.1964, was registered, in fact, in accordance with the provisions of the Indian Registration Act and in particular Sections 60 and 61 thereof, only in 1968. If that be the situation, then no pre-emption application could have been filed on 2.3.1965. I am not impressed. The reason is simple. Section 16(3) of the Ceiling Act, inter alia, provides that pre-emption application has to be filed within three months of the transfer of land by registered sale-deed. In other words, it is three months from registration. If we go through the order of the Sub-Divisional Officer, it would be found that when on 2.3.1965, the pre-emption application was filed, it was accompanied by certified copy of the sale-deed. This fact is not denied. From this, it is apparent that the document effecting transfer by way of sale had already been registered and it is only as a consequence thereof that the certified copy was issued. What learned counsel for the petitioners asserts is that in terms of Sections 60 and 61 of the Ceiling Act, registration is completed only when the document presented for registration is copied and copying is completed. I am

afraid, that is not the law in relation to pre-emption. A document requiring compulsory registration under the Indian Registration Act has first to be executed by the parties then it is to be submitted for registration and then execution has to be admitted as well as receipt of consideration. Upon these being satisfied, the Registrar has to satisfy that the fees and duties in respect of registration are paid. Once that is done, he endorses the document as registered. What then follows is copying the document for preservation of records. That is only a ministerial act. That takes time as is evident from this case that the document was presented for registration in December, 1964 soon after its execution, execution admitted, document registration number noted in December, 1964 itself and certified copies thereof issued in March, 1965. It was ultimately copied in the book in the year 1968, which does not mean that it was registered in 1968. That was of no relevance so far as raising claim for preemption is concerned. The document stood registered upon completion of the process as noted above. What was left was only to ministerial and mechanical recording thereof. it became a public document the day registration was ordered.

6. Moreover, learned counsel for the" petitioners refers to Rule 19 of the Ceiling Rule. All I may note is that Rule 19 talks about formalities of application of preemption and documents to be annexed. Form of application for pre-emption has repeatedly been held to be directory by this Court. Thus, in substance, the preemption application was well within the time because if there had been any further delay, it would have been fatal. Thus, this contention on behalf of the petitioners cannot be accepted.

7. The second contention raised by the petitioners is that the pre-emptors had no right to pre-empt and a joint application by six persons could not be maintainable. The answers to both are in negative. It is not disputed by the writ petitioners that the vendor and the pre-emptors are joint in the touzi. It has not been asserted as a matter of fact at any stage that the pre-emptors were not adjoining boundary raiyats in respect of the plots in the touzi, which were being transferred. What was being asserted is the fact that the six applicants joined to give one application for pre-emption, which showed that there was no joint interest amongst them. But when we look as to who those six persons are, it would be found that they are son, grandson and daughter-in-law of one late Ramjee Singh, who claimed to be one joint family having proportionate undivided interest in the entire touzi. It cannot be disputed that a joint family consists of karta, his wife and his son and where the estate has not been partitioned, similarly brothers. They had all joined by way of abandoned caution otherwise they constitute one unit for the purposes of pre-emption their interest being joint and undivided. Thus, even this issue raised on behalf of the petitioners is without merit.

8. The last contention raised is either pre-emption has to be allowed as a whole in respect of the entire properties or none at all. For example, if properties of two districts were being sold, there cannot be a part pre-emption in respect of

property in one district. The proposition is well-established, but the question is does it apply to the present facts. As noted above, what was being sold was over 16 bighas of land of this touzi. In terms of dhurs, it would be more than 6400 dhurs approximately equal to 16 bighas. What was included in the sale-deed was 10 dhurs of land of another district. The sale was predominantly of 16 bighas. 10 dhurs, which, as noted above, is less than 0.15% of the total transaction, which was included only to defeat the law in regard to pre-emption. It was clearly a fraud on Registration. The object being to circumvent the law, the transaction in that respect is not bona fide and the contract to that extent would be void u/s 23 of the Indian Contract Act and would not bind the parties. For the reasons aforementioned, all the grounds as raised by the petitioners are misconceived and this writ petition is, thus, dismissed.