

(2003) 12 JH CK 0014
In the Jharkhand High Court
Case No : CWJC No. 3849 of 1996 (R)

Dharam Gope @ Dharam Mahto and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34
Limitation Act, 1963 — Article 136

Citation : (2004) 1 JCR 365

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Prakash Kishore Prasad, for the Appellant; GP I, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard.

2. The petitioner has prayed for quashing the order dated 14/15.10.1996, passed by the Land Reforms Deputy Collector (respondent No. 2) in case No. 14/75-76/13/78-79, directing the petitioners to execute an order of pre-emption, passed u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act).

3. According to the petitioner, the application of respondent No. 3 u/s 16(3) of the Act, was allowed by order dated 17.10.1978. The appeal preferred by the petitioners was rejected on 23.9.1981. Thereafter, respondent No. 3 kept mum for several years and did not take any step for execution of the said order of pre-emption, " granted in his favour. After more than 15 years, on 23.1.1996, respondent No. 3 made an application before respondent No. 2 praying for execution and registration of the sale-deed on the basis of the said order dated 17.10.1978. Petitioners objected to the same on the ground pf limitation. By the impugned order dated 14/15.10.1996 (Annexure 3), the respondent No. 2

rejected the objection and directed the petitioners to appear before him for the purpose of execution and registration of the sale-deed.

Learned counsel for the petitioner submitted that Section 16(3)(iii) provides that the procedure prescribed in Order XXI, Rule 34 of the Code of Civil Procedure, 1908, shall be, so far as may be, followed. Therefore, it was submitted that in view of provisions of Order XXI, Rule 34, CPC, read with Article 136 of the Limitation Act, 1963, it is clear that the period of limitation was 12 years for the execution of any decree or order even by the Civil Court. It was further submitted that the cause of action for execution of the sale-deed in favour of respondent No. 3 arose, when the order was passed, allowing the application of respondent No. 3 on 17.10.1978 and, confirmed on 23.9.1981. Therefore, it is submitted that the said application of respondent No. 3 filed on 23.1.1996 was clearly barred by limitation.

4. Learned counsel for the petitioner further submitted that the respondent No. 2 has passed the impugned order purportedly on the basis of Section 16(3)(ii) which provides that on deposit of purchase money, the person claiming pre-emption 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. Learned counsel for the petitioner relied on a Division Bench Judgment of this Court, reported in 1986 PLJR 306 (Shambhu Prasad Singh v. Gautam Pandey and Ors.), and submitted that the said provision is only directory and not mandatory. Learned counsel, therefore, submitted that the impugned order is liable to be set aside on this score also.

5. On 19.8.1997, an interim order was passed by this Court, staying the operation of the impugned order.

6. After considering the entire matter, I find that the application filed by the respondent No. 3 on 23.1.1996 was clearly barred by limitation which objection of the petitioners could not be brushed aside by respondent No. 2 on the ground that in view of Section 16(3)(ii), the respondent No. 3 will be deemed to be in possession and therefore, there is no question of limitation/adverse possession.

7. Accordingly, this writ petition is allowed and the impugned order dated 14/15.10.1996, is set aside. There will be no order as to costs. Petition is allowed.