

(1984) 02 PAT CK 0011

In the Patna High Court

Case No : Letters Patent Appeal No. 56 of 1979

Dukhan Sah and Another

APPELLANT

Vs

Gajendra Sah and Others

RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules,
1963 — Rule 19(6)

Citation : AIR 1984 Patna 368 : (1984) PLJR 799

Hon'ble Judges : S. Sarwar Ali, J;B.P. Jha, J

Bench : Division Bench

Advocate : Anjani Kumar Saran and Banwari Sharma, Jr. Counsel to Advocate General, for the Appellant; A.N. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

S. Sarwar Ali, J.—This Letters Patent Appeal is directed against the order of the learned single Judge in C.W.J.C. No. 642 of 1979, allowing the writ application of the writ petitioner, who is respondent No. 1 in this appeal.

2. The writ petitioner, Gajendra Sah, purchased 19 Dhooors of land in plot No. 638, Khata No. 29 in village Jahangirpur, district Saran. The appellants filed an application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter referred to as the Act, which was dismissed by the Land Reforms Deputy Collector. In appeal, this order was affirmed. The Board of Revenue, in revision, allowed the revision application and allowed pre-emption. Purchaser, Gajendra Sah, therefore, filed the writ application, aforesaid, which has been allowed. Hence this Letters Patent Appeal by the pre-emptors.

3. Section 16(3) of the Act envisages deposit of "purchase money" by the pre-emptor together with 10% thereof. Unless such a deposit is made, the

application for pre-emption cannot be entertained. The only controversy in this case is, whether there was a deposit by the pre-emptor in accordance with law. The pre-emptor had in this case made a deposit of Rs. 350/- as "purchase money" and Rs. 50/- being 10% of the entire consideration money. (Rs. 500/-) shown in the sale deed.

4. The sale deed in question states the consideration to be Rs. 500/- in the relevant column of the sale deed. In the recital portion, it is stated that for a price of Rs. 500/- the property mentioned in column No. 2 is sold and the entire consideration money has been received in this way that Rs. 150/- is being left for redeeming the mortgage debt payable to Mahendra Sah and a sum of Rs. 35/- has been received at the time of agreement of sale and Rs. 315/- has been received at the time of exchange of equivalent. Thus, the vendor himself received Rs. 350/- and Rs. 150/- was left with the vendee in order to redeem the mortgage which had been executed earlier. The question which has to be considered and answered is, whether the amount of Rs. 350/- is the "purchase money" or it is the amount of Rs. 500/-.

5. Section 16(3) of the Act is as follows: --

"16(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 registration of the document of the 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 land and possession thereof shall be restored to the transferor 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 (1).

(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 C.P.C., 1908 (V of 1908), shall be, so far as may be, followed".

It is to be noticed that in case the preemption application succeeds, the land has to be transferred to the pre-emptor on the terms and conditions contained in the said deed.

6. The ordinary meaning of "purchase money" is "the sum for which anything is or may be purchased" (The Oxford English Dictionary). One of the meaning of the "purchase" is "to acquire". In my opinion, "purchase money" refers to the price of that which was the subject matter of purchase and sale. The fact that the vendor has not received the entire amount himself would not affect its meaning. Giving natural construction to the words used, I am of the view that it is the entire amount which has to be paid by the vendee either to the vendor, or to some other person or persons, apart from the vendor, in order to acquire title in the property, which constitutes "purchase money".

7. In a situation, as under consideration in the instant case, it may sometimes happen that the vendee after taking the sale deed may pay up the mortgagee. Now in this situation, the vendee in the first instance pays a part of the total consideration shown in the deed to the vendor, and later pays the remaining amount to the mortgagee so that the whole of the consideration amount has been parted with. If the interpretation put forth by the appellant is accepted that the actual amount received by the vendor is the "purchase money", then even though the vendee has paid the mortgage debt, the deposit would be confined only to the amount received by the vendor. Such could not be the intention of the legislature. Nor can it be presumed that the law envisages that the pre-emptor should make an enquiry as to what the vendee has actually done, whether he has paid the mortgagee or not and make a deposit according to the factual position as ascertained. Indeed such an enquiry may not be easy. But that apart, the intention of the legislature could not be that the meaning of the expression "purchase money" would differ depending on whether mortgage debt has been paid or not.

8. Some difficulties do arise in view of the provisions quoted above, which envisages that the property has to be transferred on the same terms and conditions as contained in the deed. This would mean that the pre-emptor would have the liability to pay the mortgage debt. Now if the whole amount is deposited, as my view it has to be deposited, some implications may arise where mortgage debt has not been paid by the vendee. But that cannot change the plain meaning of the expression "purchase money". The solution would be that the pre-emptor should either get the amount paid to the mortgagee through the Collector, if the Collector is willing. Else he may file an application before the Collector after the deed is executed for withdrawal of the amount of mortgage debt which, in conformity with the provisions of Section 16(3)(iii) of the Act, too has been deposited.

9. There is one other aspect of the matter that has to be noticed. Rule 19(6) of the Bihar Land Ceiling Rules, 1963 states "Where the application is allowed and the transferee conveys the land in favour of the applicant u/s 16(3)(iii), the

transferee shall be allowed to withdraw the money deposited by the applicant". Relying on this, it was contended that since the transferee is entitled to withdraw the entire amount that has been deposited, it must be held that the expression "purchase money" means only that which has been received or is receivable by the vendor and not the entire consideration money. In my view, it is a wrong approach to interpret the section with the help of the rules. The rules should be interpreted in the light of the substantive provision and not vice versa. To interpret the section in the light of the rules would be putting the cart before the horse. Rule 19(6), therefore, in my view, must mean that the vendee would be entitled to the withdrawal of the money deposited by the applicant which is payable to him. If it is not so interpreted, the rule would be ultra vires of the section.

10. Learned counsel for the respondents relied on a Bench decision of this Court in Deo Nandan Mishra Vs. State of Bihar and Others, in which it has been held, on the facts of the case, that the amount of consideration shown in the deed was the "purchase money". The learned single Judge has distinguished this case on the ground that in that case there was no mention that there was a mortgage and that the amount of mortgage debt had to be paid by the vendee. Be that as it may, the principles decided in that decision are helpful in the view that I have taken.

11. I am, therefore, of the opinion that in view of the interpretation of the expression "purchase money" as given by me, the learned single Judge rightly allowed the writ application. But I must say that the reasonings given by him in the earlier portion of the judgment do not conform to the ultimate decision taken by him. Learned counsel for the appellants contended that they were contradictory. Since I am taking a view which conforms to the ultimate decision in the writ application, it is not necessary to enter into the analysis of the judgment and the reasonings on which it is based. This Letters Patent Appeal is, accordingly, dismissed, but in the circumstances without costs.

B.P. Jha, J.

12. I agree.