
(2011) 04 JH CK 0143

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4852 of 2003

Fatima Bibi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 32

Citation : (2011) 3 JCR 7

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The Respondent No. 5 purchased a piece of land measuring an area 1.41 acres appertaining to plot No. 2 of khata No. 1 situated at village-Bana under police station-Bishrampur, district-Palamau vide registered sale deed dated 6.8.1993 which was registered on 15.4.1997. Thereupon the Petitioner filed an application for preemption 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") before the Land Reforms Deputy Collector, Daltonganj claiming herself to be adjoining raiyat of the vended plot and therefore, prayer was made to direct the vendor to execute the sale deed in her favour with respect to land in question. The said application was dismissed on 25.11.1998 holding therein that the vended plots are in different blocks whereas pre-emptor is adjoining raiyat to only part of the vended plots situated towards southern side and as such, claim of preemption cannot be allowed. That order was challenged in appeal before the Deputy Commissioner, Palamau, vide L.C. Appeal No. XV/117 of 1998-99 which was allowed by holding that the Petitioner is the adjacent raiyat of the vended property. Accordingly, the order passed by the Land Reform Deputy Collector, Daltonganj was set aside.

2. The Respondent No. 5 being aggrieved with the said order preferred revision u/

s 32 of the Act before the Member, Board of Revenue, Ranchi, vide L.C. Revision No. 2 of 2003. The Respondent No. 2 allowed the revision application on taking into account of the fact that disputed land is in two blocks whereas preemptor, is an adjacent raiyat to only one part of the vended plot and as such, it was held that the claim of pre-emption cannot be allowed with respect to entire vended plot. Consequently, he set aside the order passed by the Deputy Commissioner, Palamau.

3. Being aggrieved with that order, this writ application has been filed.

4. Learned Counsel appearing for the Petitioner submits that if the land of vended plot is in one block and the pre-emptor holds land adjacent to even part of the land of that block, application for pre-emption cannot be disallowed which proposition has been laid down by the Patna High Court in a case of Abdul Gafoor v. The Additional Member, Board of Revenue (1984 BBCJ 424) but the Member, Board of Revenue by going against that principle rejected the claim of the pre-emption, though admittedly the Petitioner was adjacent raiyat to part of the vended plot and as such, the said order is fit to be set aside.

5. As against that, learned Counsel appearing for the Respondent No. 5 submits that right of reconveyance can be claimed with regard to the whole of the vended property and not for part of the property and this proposition has been laid down as back as in the year 1971 by the Full Bench of Patna High Court in a case of Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others, and therefore, the order passed by the Respondent No. 2 never suffers from any illegality.

6. Having heard learned Counsel appearing for the parties and on perusal of the record, it does appear that when Respondent No. 6 sold a piece of land measuring 1.41 acres to Respondent No. 5 through a registered sale deed, an application was filed u/s 16(3) of the Act by the Petitioner claiming herself to be 2 adjoining raiyat of the vended plot which has been found to be in two blocks by the court below running from north to south. The Respondent No. 2 by taking note of the site map produced before him did find that the land stands divided by "Bandh" measuring 12 decimals. From perusal of the site plan which has also been filed before this Court, it does appear that the area of the land adjacent south to Bandh is very less in comparison to the piece of land which is there on the northern side of the Bandh. The Petitioner, Fatima Bibi is a boundary raiyat on the southern side whereas on the northern extremity of the disputed land which is having large area boundary raiyat is one Samsuddin Ansari and not the preemptor. Therefore, it has been found by the Respondent No. 2 that the land does not form one block and in that situation, it was held by the Respondent No. 2 that the claim of the pre-emptor- adjoining raiyat cannot be allowed for part of the vended plot as the same is not permissible. I do not find any illegality in the finding given by the Respondent No. 2 in the circumstances stated above and also in the context of the object of law relating to pre-emption which has been noted by the Hon'ble Supreme Court in a case of Hiralal Agrawal etc. Vs.

Rampadarath Singh and Others, etc., which reads as follows:

to secure consolidation by giving the right of reconveyance to a co-sharer or a raiyat of the adjoining area so that the land in question can be used in the most advantageous manner and also to prevent fragmentation of the land.

7. In the facts and circumstances of the case, I never do find that the order passed by the Respondent No. 2 vitiates the object of the legislature as enunciated above. In this view of the matter, the case relied upon by the learned Counsel appearing for the Petitioner is not helpful to him as in that case all the plots which had been sold were in one block and the pre-emptor was adjoining raiyat to some of the plots but not all and hence, it was held that claim of the 3 pre-emptor cannot be disallowed primarily for the reason that the land was in one block.

8. Here, in the instance case, admittedly vended plots are in two blocks and the Petitioner's claim of being adjoining raiyat is confined to only part of the vended plot and as such, I do not find any illegality in the order passed by the Respondent No. 2. Hence, this writ application being devoid of merit is hereby dismissed.