
(1969) 03 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 385 of 1968

Ganesh Prasad

APPELLANT

Vs

Jugeshwar Tewari and Others

RESPONDENT

Date of Decision : 26-03-1969

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 12, 16(3), 16(3)(i), 2, 2(f)
Constitution of India, 1950 — Article 226

Citation : (1969) PLJR 284

Hon'ble Judges : N.L. Untwalia, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : J.K. Prasad and Raneshwar Pd. Sinha, for the Appellant; Shreenath Singh and Thakur Pd., for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—A piece of homestead land, the area of which is 10 dhurs and comprised in plot no. 3639, admittedly belonged to Sheo Shankar Pandey, respondent no. 2 of this writ application. He executed a kebala in respect of the said land on the 4th of October, 1966 in favour of Ganesh Pd. the petitioner, and registered it on the 19th December, 1966; the consideration money in the kebala was Rs. 200/-. On the 29th of December, 1966 Jugeshwar Tewari, respondent no. 1, filed an application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962) hereinafter called the Act. In the petition, a copy of which is Annexure 1 to writ application and which was in Form LC 13 as prescribed by Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963, the fact stated was that Jugeshwar Tewari was the Raiyat of the land adjoining the land of the raiyat Sheo Shankar Pandey, the land which was transferred by the sale deed aforesaid to the petitioner. In Schedule 1 the description of land transferred given was that it was "homestead". No further statement was made in the petition to indicate as to whether it was homestead

as defined in the Act or it was homestead as is the meaning ascribed to the term in several decisions under the Bihar Tenancy Act, to say that it was a piece of land fit for building purposes, on which actually no dwelling house stood. The petitioner filed a rejoinder, a copy of which is Annexure 2. In this rejoinder, he claimed that Jugeshwar Tewari was neither a co-sharer nor a raiyat of the land adjoining that which was transferred to the petitioner and that the land was in his (petitioner's) peaceful possession for more than 36 years but in order to ratify his possession the sale deed in question had been executed. In Schedule 2 of Annexure 1 wherein description of the adjoining land of Jugeshwar Tewari was given, it was mentioned that it was comprised in plot no. 3637 measuring 1 katha 19 dhurs. Respondent no. 1 claimed to be a part owner of this plot adjacent east of the land transferred. Affidavits were filed on behalf of both the parties before the Sub-divisional Officer. He did not allow the application of Jugeshwar Tewari. The appeal was allowed by the Additional Collector; a copy of his order is Annexure 6 to the writ application. His order dated 25.8.67 has been upheld by the Additional Member, Board of Revenue, in the Board's resolution dated 8.4.68, a copy of which is Annexure 8, whereby the revision application filed by the petitioner has been dismissed. It may be stated that the petitioner had also gone before the Commissioner of Tirhut Division in revision which was rejected as not maintainable.

2. The Additional Collector as also the Additional Member, Board of Revenue, has accepted the case of respondent no. 1 that on private partition he got the western portion of plot No. 3637 which portion is adjoining area of the land transferred.

3. The land is situated in Kesaria Bazar in the district of Champaran. The decision of a Bench of this Court in (1) Mohammad Yasin V. Abdul Rauf (1967 B.L.J.R. 49) was cited before the Board in support of the petitioner's contention that since the land was situate in a business or bazar area, the provisions of the Act could not apply to it and no right of pre-emption could be granted to respondent no. 1 u/s 16(3) of the Act. The learned Additional Member of the Board distinguished the decision on the ground that--

In the present case, it is not that the disputed plot and contiguous plots were being used for housing or other urban purposes. The ruling in that case would, therefore, not help the petitioner.

The petitioner has obtained a rule from this Court against the respondents to show cause why the orders of the Additional Collector, respondent no. 3, and Additional Member, Board of Revenue, respondent No. 4 be not called up and quashed by grant of an appropriate writ under Article 226 of the Constitution. Cause has been shown by respondent no. 1, and learned Standing Counsel no. 1 also assisted the Court on behalf of respondents 3 and 4.

4. In my opinion, the application filed by respondent no. 1 u/s 16(3) of the Act has got to fail on its face. The copy of the Kebala dated 4.10.66 attached with

the application shows that the land transferred measuring 10 dhurs was merely gharari meaning thereby homestead in the sense of land fit for building purposes. The Kebala does not show that any dwelling house stood upon the land or it was transferred with it under the Kebala.

5. Section 16(3)(i) of the Act provides--

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 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.

"Land" is defined in Clause (f) of Section 2 of the Act as follows--

"Land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhar or pasturage or the homestead of a land-holder.

Explanation--"Homestead" means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

"Land-holder" as stated in Clause (g) of Section 2 "means a person who holds land as a raiyat or as an under-raiyat and includes a mortgagee of land with possession." Considering these definitions, it has been pointed out by Narasimhan, C.J. and K.K. Dutta, J., in Mohammad Yasin's case referred to above that "the provisions of the Act have no application to urban sites which are used for purely non-agricultural purposes." It may be added that the various purposes of the Act, as they appear from the preamble, have been sought to be achieved by making provisions in the various chapters of the Act. The first purpose--"Fixation of ceiling"--is sought to be achieved by Chapter II which is headed "Ceiling of land." The purpose of "Restriction on sub-letting" is referable to the provisions contained in Chapter VI, heading of which is exactly the same. The purpose of "Resumption of land by raiyat from under-raiyat" is sought to be achieved by Section 12 and the other sections enacted in Chapter III. The purpose of "Acquisition of surplus" has been sought to be achieved by Chapter IV, the heading of which is identical. The purpose of "Acquisition of status of occupancy raiyat by under raiyat" will be referable to Chapter VII, Chapter V wherein occurs the 16th section of the Act is headed "Restriction on future acquisition" which is a matter connected with the fixation of ceiling as the main provisions in Sub-sections (1) and (2) of the 16th section are directly connected with that matter. It's not quite clear from the provision of Section 16(3) as to what purpose is sought to be achieved thereby or in regard to what matters

connected therewith a right of pre-emption has been given to a co-sharer or a raiyat holding land adjoining the land transferred, as it is not provided therein that if such a land has been transferred to a person who exceeds the limit of the ceiling of the land fixed under the Act then and then only the co-sharer or the raiyat holding land adjoining the land transferred will have a right of pre-emption. One thing however, seems to be clear, as was pointed out by the Bench in Mohammad Yasin's case, that the main purpose of the Act is to confer right u/s 16(3) on such persons who are engaged in agricultural pursuits and in respect of such land transferred as was connected with an agricultural pursuit or an agricultural holding. This seems to be clear from the definition of the "land" itself as it must be a land which is either used or capable of being used for agricultural or horticultural purposes, and even if it is a homestead as described in the explanation appended to Clause (f) of Section 2, it must be a homestead of a landholder as defined in Clause (g). That would bring about the distinction that if the land is not the homestead of a landholder, that means of a raiyat engaged in agriculture, it will not be a land within the Act and hence provision of Section 16(3) will not be applicable to it. On the facts of this case, what I get is only this that the adjoining land of respondent no. 1 was his homestead over which stood his dwelling house as stated by him in his petition of appeal before the Collector. The transferred land was in Kesaria Bazar and it is not clear as to how it was connected with any agricultural purpose except the statement of respondent no. 1 in Annexure 1 that it was the homestead of a raiyat. In my opinion, therefore, the Bench decision in Mohammad Yasin's case is neither clearly distinguishable nor does it apply on all fours. Some help, however, can be taken by the petitioner from the principle decided in that case.

6. I would, however, mainly rest this judgment in favour of the petitioner on the ground which I have indicated and that is this: In the second column in Schedule 1 appended to Form L-C 13, in which schedule description of the land transferred has to be given, the words are "Description of the land whether held for agriculture or horticulture or homestead". Comparing the word "held" in the Form with the definition of the "land" in Section 2(f), it would be noticed that "held" there would mean that the description of the land should be given as to whether it is used or capable of being used for agricultural or horticultural purposes. No such statement with regard to the piece of land in question was made by respondent no. 1 in his application. He merely said that it was homestead. But this description did not fulfil the description given in the Explanation to Clause (f) of Section 2 of the Act as on the face of the Kebala the land was merely a piece of homestead land and not a land which fulfilled the description of "homestead" in the Explanation.

7. Mr. Thakur Prasad, learned Counsel for respondent no. 1, made two submissions--(i) that the petitioner himself had claimed in his petition before the Board as also in this Court that a dwelling house stood upon the land and (ii) that in any view of the matter the fact was not raised before the Sub-divisional Officer and was not investigated by any of the courts below.

8. In the rejoinder application filed before the Sub-divisional Officer, the petitioner had not stated that a dwelling house stood upon the land. The respondent no. 1 wants to take advantage of his admission in his application in revision filed before the Board or his writ application in this Court, the admission as a whole can be used and not part of it. If used as a whole, the petitioner's case is that the land was not actually transferred to him in the year 1966 and that he was in its possession since long--for about 36 years, and, therefore, the provision of Section 16(3) will not be attracted. Obviously, the respondent could not be prepared to use the whole of the admission, and ordinarily and generally a part of the written admission cannot be used in favour of a party who wants to use it.

9. It is, no doubt, true that the fact whether the land transferred was a homestead exactly in the sense of the Explanation appended to Clause (f) of Section 2 of the Act was not pointedly raised by the petitioner before any of the courts below. But in my opinion he is entitled to raise this point in this Court on the face of the record which includes the petition filed by the respondent no. 1 u/s 16(3) of the Act and to show that reading the petition with the statement in the Kebala which was appended to the petition, it is manifest that the transferred land does not fulfil the description of "homestead" as required under the Act. That being so, the point urged on behalf of the petitioner must be accepted as correct. In the result, the application succeeds and is allowed. By grant of a writ of certiorari, the order of the Additional Collector (Annexure 6) and the order of the Additional Member, Board of Revenue (Annexure 8) are quashed. There would be no order as to cost.

Kanhaiyaji, J.

I Agree