
(2006) 08 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 15421 of 2005

Ghanshyam Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Citation : (2006) 4 PLJR 66

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Madhav Roy, for the Appellant; S.C. No. 1(Ceiling), for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Madhav Roy, learned Counsel for the petitioner, Mr. S. Asgar Hussain, learned Senior Counsel for the respondent No. 5 and the learned S.C. No. 1(Ceiling) for the State.

2. The petitioner seeks quashing of the order dated 31.10.2005 passed by the Additional Member, Board of Revenue in Revision Case No. 281/02 Annexure-12) by which he has set aside the order dated 11.10.2002 passed by the Collector, Muzaffarpur, in Ceiling Appeal Case No. 12 of 2001-02 (Annexure-11) and the order dated 9.11.2001 (Annexure-9) passed by the Deputy Collector Land Reforms, Muzaffarpur (West) in Ceiling Case No. 16 of 2001-02 and thereafter allowed the claim of pre-emption of respondent No. 5 and directed the D.C.L.R. to take further step for re-conveyance in accordance with law.

3. The petitioner's case is that Plot No. 665, Khata No. 135 of village-Chainpur falling under Kanti Police Station of Muzaffarpur District belongs to one Ramphal Rai who was the recorded tenant in the revisional survey and it is adjacent to Muzaffarpur town near Bhagwanpur Chauk and naturally it grew as residential area. Although the said land is of 2.20 acres but out of the same the area of 11 dhurs (968 Sq.ft.) was purchased by respondent Nos. 6 and 7 by registered sale

deed dated 19.2.88 and on the same day another plot having an area of 10 dhurs (880 Sq.ft.) adjacent to the said land was purchased by one Smt. Kamini Devi by another registered sale deed. The said 10 dhurs of land was purchased from Smt. Kamini Devi by respondent No. 5 by registered sale deed dated 29.6.1989 for the purpose of residence and after purchase the respondent No. 5 alongwith her family constructed her house and started living with her family. Further case is that many other persons had purchased various plots of land in the vicinity of the land in question for residential purposes. The petitioner purchased the 11 dhurs of land from respondent Nos. 6 and 7 by registered sale deed dated 10.9.2001 for residential purpose. It is stated that the petitioner thereafter constructed a khapara posh house on the said land and started living there.

4. A pre-emption application was filed u/s 16(3) of the Ceiling Act by respondent No. 5 on the ground of being an adjoining raiyat which was registered as Case No. 06/2001-02. The D.C.L.R. after considering the case of the parties and making a local inspection of the area came to the conclusion that on the disputed land there was a khapra posh house having two old rooms standing thereon and all around the said disputed land there were residential houses. Thus, he came to the conclusion that the said land had become a residential land and Section 16(3) of the Act was not applicable and rejected the application for pre-emption.

5. Aggrieved by the same respondent No. 5 filed appeal before the Collector, Muzaffarpur, which was registered as Ceiling Appeal No. 12/01-02. In the said case a direction was made by the Collector to the D.C.L.R., Muzaffarpur (West) asking for fresh local enquiry report. In his local inspection report the D.C.L.R. reported that the disputed Land is situated at the boundary of the Muzaffarpur Municipal Corporation area within a residential colony; the disputed plot is residential land upon which there is a house in dilapidated condition. It was further reported that in northern side of the said land respondent No. 5, Rambha Sharma has a pucca house and in its south one Suresh Prasad Thakur has a pucca house and in its east there is road. For the said reason it was stated in the report that disputed land is purely a land of residential nature.

6. On a consideration of the aforesaid facts and the inspection report the Collector by his order dated 11.10.02 came to the conclusion that the disputed land was situated in residential area and it was itself residential in nature and, therefore, Section 16(3) of the Act is not applicable to the case.

7. Against the order of the Collector respondent No. 5 filed revision before the court of the Member, Board of Revenue being Revision Case No. 281/02. By order dated 31.10.2005 the Additional Member Board of Revenue allowed the revision and set aside the orders of both the courts below. The main reason given in the said order is that the Collector has wrongly relied upon the local inspection report of the D.C.L.R. when he was hearing an appeal against the order of the D.C.L.R. The Additional Member, Board of Revenue has also relied upon the entries in the khatian under which nature of larger plot of and has been shown as agricultural.

8. Learned Counsel for the petitioner submits that the land in question is only 11 dhurs, i.e., 968 sq. ft. and such small plot by a registered sale deed was purchased for only residential purpose. Moreover, he has stated that the respondent No. 5 cannot be considered adjoining raiyat. She had also purchased only 10 dhurs of land, i.e., 880 sq. ft. on 29.6.1989 and had constructed a house over it and, thus, she cannot be said to have purchased the same for agricultural purpose nor is she carrying on any agriculture operation on the said land. It is further submitted by learned Counsel on the basis of a decision of this Court reported in 1968 P.L.J.R.1 Mussamat Dukhi Devi and Ors. v. Uchit Lal Mandal and Ors. that in a case of pre-emption what is relevant is not the plot of land but the piece of land in question because after it is sold separately it acquires a separate identity of its own. Learned Counsel further submitted that the basis of the finding of both the D.C.L.R. and the Collector had been the local inspection report made by the D.C.L.R. in which the clear finding recorded was that the entire area had become a residential colony and the land in question was within the residential colony and further respondent No. 5 had also small plot of land and had constructed a house over it. For the said reason learned Counsel submits that if the Additional Member, Board of Revenue had found that the local inspection report by D.C.L.R. whose order was under challenge in appeal was vitiated, then after disbelieving the same the Additional Member should not have proceeded to decide the matter without any evidence or material on record, except the Lower court record which did not show the present position of the land, and pass the order accordingly.

9. Learned Counsel for the petitioner further submits that the clear case of the petitioner before the pre-emption authorities was that the area itself had changed its nature and it became residential area in which residential colony has also come up but the said fact had not been challenged at all before any of the courts of facts right up to the Additional Member, Board of Revenue and now at the stage of the writ petition such facts cannot be challenged by filing counter affidavit. Learned Counsel submits that this aspect of the matter has not at all been taken into consideration by the Additional Member, Board of Revenue while allowing the revision and pre-emption application.

10. In support of the aforesaid proposition that the area has become residential colony learned Counsel has annexed as Annexure- 8; a newspaper report contained in "Dainik Jagaran" dated 1.12.2005 which relates to the bad sanitary condition prevailing in the new colony Chainpur and in which it is reported about Arjun Sharma, husband of respondent No. 5, that he has also made certain statements regarding the bad sanitary condition in the locality as a resident of the said colony and his photograph is also published in the said newspaper report. It is submitted that the said news report, the statement and the photograph of respondent No. 5 have not been denied in the counter affidavit.

11. In support of the proposition that the Board of Revenue ought not to have proceeded to decide the matter after having held that the report of the D.C.L.R.

cannot be relied upon since he had passed the original order of rejection of the pre-emption case, but rather the Board of Revenue should have directed a fresh local inspection to be made and then passed the final order, learned Counsel relies upon the recent decision of this Court in the case of Shanti Devi and Others Vs. State of Bihar and Others, . In para 7 of the said Judgment this Court has held as follows:

In my opinion for deciding the nature of the land whether it is agricultural or homestead, the authorities should have conducted an enquiry and on being satisfied on the basis of enquiry report only it could have been decided whether the nature of the land is homestead or it is agricultural land with respect to which the pre-emption application is maintainable.

12. Learned Counsel also relies on the fact that after the pre-emption application was allowed by the Board of Revenue and re-conveyance was ordered, in the instrument of conveyance additional stamp duty under the R.D.A/ Municipal Act has also been paid which shows that the land has ceased to be an agricultural land and has become a residential land as part of the expanding urban area of Muzaffarpur.

13. Learned Counsel for the respondent No. 5, on the other hand, has relied upon the averments made in the sale deed in which according to him the purchaser is described as an agriculturist and so also vendors of the said land. It is stated that in view of the said fact the land has to be presumed to be an agricultural land. However, on a perusal of the said sale deed it appears that the purchaser, i.e. the present petitioner has been described both as an agriculturist as a person in service and the similar description has been given of the vendor. Thus, the said statement of the learned Counsel does not appear to be correct.

14. The main submission of the learned Counsel for the respondent, however, is that the Board of Revenue is a final court of facts and has applied its mind to all aspects and has come to a clear finding with regard to the nature of land. It is not open to this Court in writ jurisdiction to set aside the said finding on reappraisal of the evidence. In support of the said proposition the learned Counsel relies upon decision of this Court reported in cases of Kamleshwari Prasad Yadav @ Kamleshwari Yadav v. State of Bihar and Ors. 1986 B.L.J.R. 698. Jagannath Sah v. PannaLal Mahto and Ors. 1987 P.L.J.R. 1 and the case of Faguni Ram and Others Vs. State of Bihar and Others, The said proposition is no doubt a well established proposition of law and the Board of Revenue is undoubtedly the last court of facts in a matter arising out of the Ceiling Act. It is also true that this Court cannot reappraise the evidence and reach a different conclusion on the same material on which the Board of Revenue has come to its conclusion. However, that does not mean that if the decision of the Board of Revenue is perverse in the sense that it is based on no material or it is based on material from which no reasonable person can draw an inference as has been drawn by the authority concerned or if the findings of fact have been arrived at by taking into consideration certain irrelevant material or ignoring relevant material then

this Court can interfere with the said findings of fact.

15. The further submission of the learned Counsel for the respondent No. 5 is that it was for the petitioner to show that the piece of land which had been recorded in the revisional survey as agricultural land, had changed its nature and become non-agricultural. According to him the petitioner has failed to show the same.

16. It is also submitted by the learned Counsel for the respondent that the right to pre-emption is to be considered with respect to facts existing the date on which the application for pre-emption is filed and not on the basis of subsequent events. In support of the said proposition learned Counsel relies upon a decision of Full Bench of this Court in the case of Ram Chandra Srivastava and Ors v. Parsidh Narain Singh and Ors. 1970 B.L.J.R. 1101. The said proposition is also well established and the dispute with regard to the claim of pre-emption has to be considered on the date the application is filed.

17. On a consideration of the aforesaid facts and the various decisions cited by both the sides it is evident that what has to be seen is the position as existing on the date on which the application for pre-emption was made. In this regard there is a clear case of the petitioner from the very beginning that not only the plot of land, a small part of which comprises the disputed land, but the entire area had acquired residential nature and had ceased to be agricultural. The said case of the petitioner finds support in the order of the D.C.L.R. The Board of Revenue disbelieved the enquiry report of the D.C.L.R. at the appellate stage because he had passed the original order it had also disbelieved the statement regarding local inspection having been made, as stated in the order of the D.C.L.R., since he could not any memo of inspection in the original records. If that was the position and the local inspection was to be disbelieved as vitiated or treated as non-existent, the Additional Member, Board of Revenue ought to have called for a fresh local inspection by a competent officer and only thereafter the final order should have been passed in revision. By relying only upon the original khatian and revisional survey records the Additional Member has failed to take into consideration the most relevant fact in such a matter as to what was the actual position on the ground on the date when the application for pre-emption was made in 2001, whether the recorded plot of land cont to be agricultural or had ceased to be so and had acquired the nature of Residential land, since the claim of the petitioner was not specific to the very small piece of land that he had purchased but pertained to the entire area. This is also a view expressed by this Court in the Shanti Devi and Others Vs. State of Bihar and Others, .

18. In the aforesaid facts and circumstances the order dated 31.10.2005 passed by the Additional Member, Board of Revenue, in Revision Case No. 281/02 is quashed and the matter is remitted back to him for deciding the case afresh in accordance with law after having a local inspection made by a suitable officer as to the actual position of the piece of disputed land as well as the area in question as on the date on which the application for pre-emption was filed.

19. This application is accordingly allowed. However, in the facts and circumstances of the case there shall be no order as to cost.