

(1972) 12 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 543 of 1970

Gujan Yadav and Another

APPELLANT

Vs

Sitaram Choudhary and Others

RESPONDENT

Date of Decision : 19-12-1972

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(3), 19(4)

Citation : AIR 1974 Patna 124

Hon'ble Judges : N.L. Untwalia, C.J.; S. Sarwar Ali, J

Bench : Division Bench

Advocate : Sushil Kumar Jha and Surendra Narain Jha, for the Appellant; S.P. Srivastava and K.P. Varma, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, C.J.—In this case the important question of law, which falls for decision, is whether in a proceeding u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter called the Act, it is open to the transferor to say that in spite of the execution and registration of the sale deed there was no transfer of land because the intention to transfer was on payment of the consideration money and since consideration money was not paid, land did not stand transferred.

2. Respondents 2 to 8 executed a sale deed in favour of respondent No. 1 on the 19th January, 1967 purporting to transfer 10 kathas 17 dhurs of land for Rs. 1,900/-. The registration was completed u/s 61 of the Registration Act Thereafter the petitioners filed an application u/s 16(3) of the Act claiming pre-emption on the ground that they were co-sharers and/or adjoining raiyats of the land transferred. It appears that notice of the filing of the application u/s 16 (3) of the Act was given to the transferors and the transferee in accordance with Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)

Rules, 1963, hereinafter called the Rules. They all appeared but the contest was by the transferors alone, namely, respondents 2 to 8. They took the plea that the intention to transfer the land was on payment of the consideration money and since the consideration money was not paid, the land did not stand transferred; they were still the owners of the land.

3. The Deputy Collector in charge of Land Reforms, Darbhanga, who decided the proceeding u/s 16 (3) of the Act in the first instance by his order dated 5-2-68 (annexure 1), observed that by taking the plea of the kind taken by respondents 2 to 8 respondents 1 and 2 to 8 "have been in collusion to commit fraud on the legislation by saying that consideration money has not been paid". He was of the opinion that since the registration of the deed has been completed, the petitioners being adjoining raiyats were entitled to the order of the pre-emption. Respondents 2 to 8 went up in appeal. The appeal was dismissed by the Sub-divisional Officer. Sadar, Darbhanga, by taking almost the same view as the one taken by the Deputy Collector, Land Reforms. A copy of the appellate order dated 31-7-69 is annexure 2. Respondents 2 to 8 went up in revision. The learned Additional Member. Board of Revenue, has observed that in view of the well settled principle of law that title does not pass until the consideration money is paid; if the intention was to pass title on" payment of such money, it is necessary that enquiry be made to ascertain whether, in the light of the principles of law enunciated in several rulings of the High Court, consideration money had actually passed and the transfer had actually taken place or not. A copy of the order of the Additional Member. Board of Revenue, dated 8-12-69 is annexure 3 to the writ application. The preemptors feeling aggrieved by the order of the Board, of Revenue have obtained a rule from this Court against the respondents to show cause why the order (Annexure 3) be not called up and quashed by grant of a writ of certiorari. Cause has been shown on behalf of respondents 2 to 8 by filing a counter-affidavit as also at the time of the hearing of the writ application.

4. Mr. Sushil Kumar Jha, learned counsel for the petitioners, submitted that

(1) On the language of Clause (i) of Sub-section (3) of Section 16 of the Act it is plain that the transfer of land is complete as soon as the registration of the document of transfer is complete and it is not open to the revenue courts to go behind the document and investigate the question of passing of consideration.

(ii) Transferors are not necessary parties to a pre-emption proceeding. Therefore, the only matter which can be investigated in such a proceeding is the one which arises on a plea which is taken or can be taken by a transferee and not by a transferor. It is not open to the transferee to take the plea of non-passing of consideration money and, therefore, revenue courts cannot look into this matter.

(iii) The proceeding u/s 16 (35) of the Act is a summary proceeding and it is beyond the scope of such a proceeding to admit the investigation of a question of passing of title because of the alleged non-payment of the consideration money, which are matters within the exclusive Jurisdiction of the civil courts.

5. I have no difficulty in rejecting all the three points urged on behalf of the petitioners. The cause of action for filing an application u/s 16 (3) of the Act arises for a co-sharer or an adjoining raiyat when the registration of the document of transfer is complete. Without the registration of the document he cannot file an application u/s 16 (3) of the Act. But that is not to say that the "transfer of land is made" within the meaning of the first part of clause (i) of Section 16 (3) as soon as a document of transfer is registered. If the intention was to transfer the land on payment of the consideration money then it is a well settled principle of law that in spite of the recital to the contrary in the document of transfer, it is open to the transferor to say that consideration money was not paid and hence either factually or legally there was no transfer of land made. I am unable to subscribe to the view that the phraseology of the provision of law, as it stands u/s 16 (3) of the Act, has undone the effect of the well settled principles of law just referred to above. In my opinion, for an effective order of preemption u/s 16 (3) of the Act it is necessary that there is in fact a valid transfer of land in the eye of law. If by a mere execution and registration of a document there is no transfer then no order of pre-emption can be made u/s 16 (3). I feel fortified in my view because of the language contained in Clause (ii) or Clause (iii) of Section 16 (3). Under Clause (ii) the co-sharer or the raiyat who is an applicant u/s 16 (3) is entitled to be put in possession of the land by dispossessing the transferee. But if, because of the non-passing of the consideration money and non-passing of the title, the transferor remained in possession then he cannot be dispossessed u/s 16 (3) (ii). Similarly, a direction to the transferee to convey the land in favour of the applicant will be nugatory and futile if the transferee, in the eye of law and in fact, had not become the owner of the land by the alleged transfer.

6. Coming to the second point urged on behalf of the petitioners in my judgment, the transferor is a necessary party. Sub-rules (3) and (4) of Rule 19 of the Rules read as follows:--

"(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgment due.

(4) The Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date to be specified in the notice and after giving the parties concerned a reasonable opportunity of showing cause, if any, and of being heard shall, by an order in writing, either allow the application in accordance with Clause (iii) of Sub-section (3) of Section 16 or reject it".

The purpose of giving notice to the transferor is to find out what he has got to say in regard to the alleged transfer. The transferor may come and say, if it is a fact, that the document of transfer purporting to have been executed and registered by him was not so done by him; it is a forged document. In other words, he can say that he did not transfer the land by executing any document at all. Such a question, if raised! by a transferor, it is plain, will have to be

investigated by the revenue court in a proceeding u/s 16 (3) of the Act. If that be so, I fail to understand why the question of the kind at issue cannot be raised by the transferor and why it should be held that investigation of such a question would be beyond the purview of the power of the revenue court in a proceeding u/s 16 (3) of the Act.

7. I am not impressed by the third point urged on behalf of the petitioners either. The proceeding before the revenue court u/s 16 (3) of the Act is not a summary proceeding as the expression is generally understood. Within its scope it is a full-fledged proceeding subject to the right of appeal to the aggrieved party u/s 30 of the Act and the revisional power of the Board of Revenue u/s 32. Section 43 bars the jurisdiction of the civil court to settle, decide or deal with any question which is, by or under the Act, required to be settled, decided or dealt with by the Board of Revenue, the Commissioner, the appellate authority or the Collector. If it were to be held that the question raised by the transferor that there was no transfer of land by him--whatever may be his ground for saying so--was not to be dealt with or decided by the revenue court in a proceeding u/s 16 (3) of the Act it will lead to anomalous results and multiplicity of litigation. In a civil court it would be open to the transferor to raise the same question because in that event Section 43 will not be a bar. If the civil court decides the matter in favour of the transferor, the entire proceeding u/s 16 (3) and all the orders passed therein will be set at naught. It does not seem to be either obligatory or expedient to take the view as urged on behalf of the petitioners--rather the scheme of the Act and the Rules suggests that all relevant questions which can be raised either by the transferor or by the transferee should be raised before and conclusively settled or dealt with by the revenue courts so that the jurisdiction of the civil courts may be barred.

8. I may lend some support to my view expressed in this case by referring to another decision of this very Bench in Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, wherein it was held that a question of benami can be raised in a proceeding u/s 16 (3) of the Act and it is well within the power of the revenue courts to deal with and decide such a question. The point at issue in the instant case is, undoubtedly, at pari materia, if not stronger, with the one agitated in the case of Narendra Kumar Ghose.

9. For the reasons stated above, I am of the opinion that the order of the Board of Revenue contained in Annexure 3 is not fit to be interfered with. The writ application, therefore, fails and is dismissed but in the circumstances there will be no order as to cost.

Sarwar Ali, J.

I agree.