

(1983) 12 PAT CK 0020

In the Patna High Court

Case No : Civil Writ jurisdiction Case No. 881 of 1983

Guru Charan Sardar and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-12-1983

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Constitution of India, 1950 — Article 226, 227

Citation : (1984) PLJR 365

Hon'ble Judges : P.S. Mishra, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherji, Md. Wasi Akhtar, Shanti Pratap and Arvind Kumar Singh, for the Appellant; S.K. Mazumdar and Mr. A.C. Jha, for the respondent No. 4, for the Respondent

Judgement

P.S. Mishra, J.—The pre-emptor, who 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") has moved this court under Articles 226 and 227 of the Constitution of India questioning the validity of the order (resolution) of Sri Arun Prasad, Additional Member, Board of Revenue, passed u/s 32 of the Act, and that of the Additional Deputy Commissioner, Singhbhum, passed in an appeal u/s 30 of the Act. Facts are short and undisputed. The petitioners are the adjoining raiyats of the vended lands. The vendor (respondent No. 5), the vendee (respondent No. 4) and the pre-emptors (Petitioners) belong to the Scheduled Tribes. With a view to transferring his land the vendor (respondent No. 5) filed an application u/s 46 of the Chotanagpur Tenancy Act, 1908, for permission to the transfer. Notices, were accordingly issued to all concerned, including the public notice, and when no objections were filed permission to transfer the lands was granted to him. After the permission for transfer was obtained in accordance with law, respondent No. 5 executed a registered document of sale in favour of respondent No. 4. The petitioner

thereafter filed an application for pre-emption as provided u/s 16(3) of the Act. On the findings that the pre-emptors are raiyats of the adjoining lands of the vended plots and co-sharers the Land Reforms Deputy Collector, Saraikela, directed for reconveyance of the lands in favour of the petitioners.

2. Respondent No. 4 (the vendee) appealed u/s 30 of the Act. The appeal was heard by the Additional Deputy Commissioner, Singhbhum, who allowed the appeal holding that the petitioners could have objected to the proposed transfer by respondent No. 5 in favour of respondent No. 4 when the application for permission to transfer the land was made u/s 46 of the Chota Nagpur Tenancy Act, but they did not do so, and, later, when the transfer was made, they filed the application for preemption only to harass the parties.

3. The petitioners filed an application in revisions against the said order of the Additional Deputy Commissioner before Board of Revenue. They, however, committed a mistake in not impleading the vendor (respondent No. 5) as a party respondent to the revision application. This mistake was later detected and an application for adding him as a party in the revision was filed by the petitioners on 11.1.1983. The revision application was finally heard by Shri Arun Prasad, learned Additional Member, Board of Revenue. He held on the facts on this case that there has been inordinate delay in filing the application for impleading respondent No. 5 as a party respondent and such a prayer at a belated stage was barred by limitation. He has further held that no application for condonation of delay was filed by the petitioners. They also failed to make out a case for condonation of delay. Relying upon a decision of the Supreme Court in *Ch. Surat Singh (Dead) and Others Vs. Manohar Lal and Others*, , he held that an application for adding a party at a belated stage could not be entertained and dismissed the revision application. The petitioners have thereafter moved this Court and questioned the validity of the orders of the Additional Deputy Commissioner, Singhbhum (Annexure 2) and the Additional Member, Board of Revenue (Annexure 1).

4. There has been no limitation prescribed for an application in revision u/s 32 of the Act, while there has been such a provision for filing an appeal u/s 30 of the Act, until the Bihar Ordinance No. 22 of 1982, published in the Bihar Gazette (Extraordinary) dated 25.1.1982 statutorily fixed a period of 30 days for filing a revision application before the Board of Revenue u/s 32 of the Act, Bihar Ordinance No. 52 of 1982 was followed by the Bihar Act No. 55 of 1982, which got President's assent on 29.1.1982 and came in force on its publication in the Bihar Gazette (Extraordinary) dated the 30th April, 1982. It is not in dispute that the petitioners filed their revision application within the prescribed period of time. Learned Additional Member, Board of Revenue, has however, proceeded on the footing that if a necessary party is not impleaded, when the application in revision is filed, the same shall not be deemed to be filed in time in so far as the party not impleaded is concerned. It appears that the issue of limitation and the addition of party was confused to the extent that there should have been an

application for condonation of delay u/s 5 of the Limitation Act along with an application for addition of party also prevailed before him. The learned Additional Member, Board of Revenue, has not adverted to the merit of the case. Having found that there has been inordinate delay in making an application for addition of the vendor as a party respondent to the revision application he rejected the revision application itself on the ground that it was barred by limitation.

5. In all cases of impleading a wrong person as a party or omission to implead a proper or necessary person as a party Courts have universally applied the principles embodied under Order 1 Rule 10 of the Code of Civil Procedure. Courts have been repeatedly told by the Supreme Court that technicalities, particularly relating to the procedure, should not be allowed to affect the course of justice. Provisions under Order 1 Rule 10 of the CPC are also couched in such words that it is always in the interest of justice that a Court of law has to consider whether the names of certain person should be deleted from a proceeding and whether certain persons names should be added or not. A reference may be made at this stage to the provisions as contained under Order 1 Rule 10(2) of the Code of Civil Procedure. It says:

The court may at any stage of the proceedings, either upon or with out the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out. and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The law has emphasised upon the duty of the Court to add a necessary person as a party to effectually and completely adjudicate upon and settle all the questions involved in the suit. True, the provisions as contained in the CPC may not be applied in a proceeding like the one in hand. But a proceeding before the Board of Revenue or the appellate authority or, for that matter, before the Collector under the Act, is a statutory proceeding and as the rights of the parties have to be adjudicated in such proceedings, they are for all purposes judicial proceedings. Quasi judicial proceedings are also required to conform to the common law principles, like principle of natural justice and fair play. A technical mistake of not naming a person as a party, who did not respond to the notice before the Collector and did not appear before him nor did he appear before the appellate authority, can be used only to a limit. It cannot be said that the application in revision filed before the Board of Revenue without the vendor impleaded as a party was no filing of a revision application at all. Like a Court of law the Board of Revenue could permit the petitioners to add the vendor, if his presence was taken to be necessary for effectually and completely adjudicating the dispute between the parties. The law that was placed before it that is to say, the authority in the case of *Surat Singh (supra)* also in a way supports the view that a Court of law is required to consider if the lapse of a party is such that it

should be taken to disentitle it from seeking interference by a higher or superior Court. The case of Surat Singh (supra) has been decided by the Supreme Court on its own facts. This case is not an authority for the proposition that even in a case in which it is shown that there has been a genuine mistake there should be no addition of a party at a belated stage. Apart from this, it is always in the interest of justice, and there are innumerable decisions of the Supreme Court emphasising that Courts/Authorities/Tribunal's hands are not fettered by technicalities if it is brought to its notice that something palpably illegal or void has been done which could be by its order avoided.

6. Coming to the provisions u/s 16 of the Act it has to be seen that right to pre-empt accrues with the transfer of the land and not before it. There could be no claim of pre-emption in favour of the petitioners unless there has been a transfer. The filing of any objection to the application for permission to transfer cannot be made a condition precedent to what is specifically pronounced by the Statute u/s 16(3) of the Act.

7. Learned counsel for respondent No. 4 has contended that in view of the special provisions of the Chota Nagpur Tenancy Act intention to pre-empt must be disclosed by filing an application u/s 46 of the said Tenancy Act, and, if there is no such objection filed, a right u/s 16(3) of the Act should not be allowed to be exercised. In other word, according to learned counsel for respondent No. 4, no application u/s 16(3) of the Act should be entertained on behalf of a raiyat of the adjoining land or a co sharer who does not exercise his right u/s 46 of the said Tenancy Act. Right of pre-emption, which has been recognised in the State of Bihar as a customary right, has been given sanction of law and has been made statutory right of a raiyat of the adjoining land or a co-sharer u/s 16(3) of the Act in respect of the lands used for agricultural or horticultural purposes. This right becomes available only when the transfer of land is made and not before it is actually made. In a series of cases this Court has pronounced that an application for pre-emption filed before the transfer is perfected is premature and action taken pursuant to any such application or upon any such application is without jurisdiction. Once it is found that the right to preempt accrues only after transfer is made and for pre-emption an application has to be filed within a period of limitation prescribed for the said purpose, which is a concluded law, as held by this Court, it is not possible to deny to a raiyat of the adjoining land or a co-sharer the right to file an application for pre-emption on the ground that he could file an objection to an application for permission to transfer the land filed by the vendor u/s 46 of the Chota Nagpur Tenancy Act. Learned Additional Deputy Commissioner (respondent No. 3) has evidently committed an error of law in rejecting the application for pre-emption on the ground that the petitioners did not file any objection to the application for permission to transfer the land in question by the vendor u/s 46 of the said Tenancy Act.

8. Learned counsel for respondent No. 4 has next contended that a person, who could file an application u/s 46 of the said Tenancy Act having not exercised his

option to object to the proposed transfer must be taken to have waived his right to make an application for pre-emption u/s 16(3) of the Act. This argument I am afraid, cannot be accepted. It is doubtful if there can be any waiver of the right to make an application for pre-emption by not filing an objection to the application for permission to transfer under the Chotanagpur Tenancy Act. A right cannot be waived before it accrues. Right to pre-empt by an application u/s 16(3) of the Act is created in favour of a raiyat of the adjoining land or a co-sharer only after the transfer is made. There cannot be, therefore, waiver of such a right before the transfer is actually made.

9. The right of pre-emption is a weak right, nonetheless it is a right created under a statutory provision. The petitioners are raiyats of the adjoining land as also co-sharers of the vended land. The purchaser (respondent No. 4) is neither a co-sharer nor a raiyat of the adjoining land. Application for pre-emption was filed within the time prescribed under the law. The learned Additional Deputy Commissioner (respondent No. 3) has committed an error of law in rejecting the application for pre-emption on the ground that the pre-emptors having not filed any objection to the application for permission to transfer, filed by the vendor u/s 46 of the Chota Nagpur Tenancy Act, cannot be granted relief of reconveyance u/s 16(3) of the Act. This error of law is such that, if allowed to stand, it shall cause serious miscarriage of justice. The learned Additional Member, Board of Revenue, rejected the revision application of the petitioners on the sole ground that the vendor had not been impleaded as a party respondent when the application for revision u/s 32 of the Act was filed on 22.4.1982. While considering the application for adding the vendor (respondent No. 5) as a party, he failed to consider that for effective and proper adjudication of the issue involved in the revision application before him if it was necessary to add the vendor as a party he could do so even later, before, however, passing the final order. Respondent No. 5 (vendor) had not appeared in the proceeding at any stage. He has not appeared before this Court also. In my view, the learned Additional Member, Board of Revenue should have allowed the application filed on behalf of the petitioners and if the technicalities of law required a notice to be given to him, sent a notice of the revision to the vendor (respondent No. 5) and given him an opportunity to show cause and heard him. The order passed by the appellate authority (respondent No. 3) is so obviously illegal that no prompting or persuasion was needed to a revisional Court, like the Board of Revenue, for quashing and setting aside his order. I am satisfied that the order passed by the learned Additional Member, Board of Revenue, dated 25.1.1983, as contained in Annexure "1", is illegal and is fit to be quashed. I am also satisfied that the order passed by the Additional Deputy Commissioner, Singhbhum at Chaibassa, dated the 23rd February, 1982, as contained in Annexure "2", is illegal and fit to be quashed. No useful purpose shall be served by sending back this case to the Board of Revenue for a decision in accordance with law on the merits of the case as respondent No. 4 has not pleaded any fact or law, except as has been discussed above, which shall require any scrutiny of the materials on the record

and determination of questions of law involved, by the Board of Revenue. In the result, the application is allowed, the order of the Additional Member, Board of Revenue, dated 25.1.1983, in Case No. (Singhbhum) 98 of 1982, as contained in Annexure "1" is quashed. The order of the Additional Deputy Commissioner, Singhbhum at Chaibassa, in L.C. Appeal Case No. 82 of 1980-81, dated 23.3.1982, as contained in Annexure "2" is also quashed. Let a writ in the nature of certiorari accordingly issue. Let a writ in the nature of mandamus also issue directing respondent Nos. 4 and 5 to reconvey the land in question in favour of the petitioners in accordance with law. On the facts and in the circumstances of this case the parties shall bear their own costs.