

(2008) 04 JH CK 0063
In the Jharkhand High Court

Hari Charan Mahato

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

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

Citation : (2008) 3 JCR 2

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. Shivnath, learned Counsel appearing for the petitioner and Mr. Das, learned Counsel appearing for the respondents.

2. The petitioner who is defendant in Title Suit No. 123 of 2002 has challenged the order dated 7.3.2006 passed by Munsif, Dhanbad whereby he has rejected the application filed by the petitioner for deciding the issue of maintainability of the suit as preliminary issue.

3. The plaintiff-respondent filed the aforementioned suit against the defendants-petitioner, the State of Jharkhand, Deputy Commissioner and LRDC Dhanbad for declaration that the notice dated 27.7.2002 issued against the plaintiff by LRDC Dhanbad an LC case No. 32 of 1975-76 is invalid, arbitrary and without jurisdiction.

4. Defendant's case is that an order of pre-emption was passed by the respondent-authority u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The right of pre-emption was allowed in revision by the Member Board of Revenue, Bihar, Patna and a sale-deed was executed in favour of the petitioner. Defendant's further case is that in view of the fact that when sale-deed was finally executed, a suit for declaration challenging, the issuance of notice is not maintainable.

5. Accordingly an application was filed by the petitioner for deciding the issue of maintainability of the suit as preliminary issue.

6. The respondent-plaintiff opposed the said application on the ground, inter alia, that there are several issues involved in the suit along with the maintainability issue and all issues are based on facts inasmuch as in spite of the order of preemption passed in 1988 the plaintiff continuously remained in possession of the suit property.

7. Admittedly the suit was filed in the year, 2002 and the defendant-petitioner appeared in 2003. In course of argument Mr. Das learned Counsel appearing for the plaintiff-respondent submitted that the hearing of the suit has begun and more than five witnesses have already been examined.

8. In the aforesaid premises I am of the view that it would be fit and proper to decide all the issues together with the issue of maintainability of the suit instead of deciding the maintainability of suit as preliminary issue. The Court below, in my opinion, has rightly rejected the application for deciding the issue of maintainability of the suit as preliminary suit. The impugned order, therefore, needs no interference.

9. For the aforesaid reasons, I find no merit in this writ application which is, accordingly, dismissed. Petitions dismissed.