(2008) 07 JH CK 0137

In the Jharkhand High Court

Jaga Mahto APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(1), 16(3)

Citation : (2008) 4 JCR 517

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order/judgment dated 27.4.2001, passed by respondent No. 3 (Additional Collector, Garhwa) in Land Ceiling Appeal No. 11 of 1992-93 and the order dated 03.07.2002, passed by respondent No. 2 (Additional Member, Board of Revenue, Ranchi) in Revision Case No. 19 of 2001.

2. I have heard the learned Counsel at length and the facts, in brief, are reproduced as under:

The case of the petitioner is that he purchased Plot No. 836 and Plot No. 837, measuring an area of 0.22 Acres and 0.06 Acres respectively from opposite party No. 2 by registered deed of sale on 12.10.1988. The same was transferred by a registered deed of gift on 7.4.1989 in favour of the Bhagina of the petitioner. Thereafter, opposite party No. 1 filed a petition on 15.4.1989 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short ''the Act''), claiming right of pre-emption on the ground that Plot No. 838 was purchased by his father along with two other persons and was adjacent to the land, in question. The aforesaid case was, accordingly, registered as Land Ceiling Case No. 3 of 1989-90 and the learned Deputy Collector, Land Reforms, Garhwa, vide order dated 8.4.1992 dismissed the Pre-emption Case on the ground of it being premature and also on the ground that prior to filing of the pre-emption application, the deed of gift was executed in favour of the petitioner''s Bhagina. Thereafter, opposite party No. 1 preferred Land Ceiling Appeal before the learned Additional Collector, Garhwa, who vide its order dated 3.6.1993 set aside the order of the learned Deputy Collector, Land Reforms, Garhwa, and allowed the appeal. Being aggrieved by the aid order, the petitioner preferred a revision before the learned Member, Board of Revenue, Bihar, Patna, which was registered as Case No. 292 of 1993. The learned Additional Member, Board of Revenue, vide its order dated 28.12.1996 set aside the order of the learned Additional Collector, Garhwa and remanded the matter to the learned Additional Collector, Garhwa. Pursuant to the said remand order, the learned Additional Collector, Garhwa, vide its order dated 27.4.2001 held opposite party No. 1 to be the boundary raiyat to the land, in dispute and, accordingly, allowed the pre-emption application. Being aggrieved and dissatisfied with the order dated 27.4.2001, passed by the learned Additional Collector, Garhwa, in Land Ceiling Appeal No. 11 of 1992-93, the petitioner preferred a revision petition once again. The learned Additional Member, Board of Revenue, vide its impugned order dated 3.7.2002 held that the land, in dispute, was transferred by registered sale deed No. 7934 dated 16.1.1989 and the pre-emption application was filed on 15.4.1989 whereas the gift deed was registered on 4.9.1989 and, therefore, the pre-emption application was filed before registration of the gift deed. Accordingly, it upheld the order of the learned Additional Collector, Garhwa, and confirmed that opposite party No. 1 in the revision application, namely, Narayan Mahto son of late Ram Dhawal Mahto, is a riayat, holding land adjacent to the vended land and, accordingly, allowed the pre-emption application. The present writ petition has been filed for quashing the order dated 27.4.2001 and the order dated 3.7.2002.

3. It appears that the gift deed was executed and presented for registration on 7.4.1989 in order to defeat the pre-emption application dated 15.4.1989 and the gift deed was registered subsequent to the pre-emption application i.e. on 4.8.1989 and, thus, it is an admitted case, on fact, that the pre-emption application was filed before the registration of the gift deed.

4. u/s 16(1) of Explanation of the Act, For the purposes of Section 16 transfer does not include inheritance, bequest or gift and under Clause (iii), no land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of Indian Registration Act, 1908 and under Clause 16(3) of the said Act, 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 the transfer, to make an application before the Collector.

5. The Hon''ble Supreme Court had an occasion to consider Section 16 of the

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act in the case of Shri Gokul Mahto Vs. The State Bank of Bihar and Others, , with regard to restriction on future acquisition by transfer. It clearly held that as per explanation below sub-clause 1 of Section 16, it clearly excludes from the purview of entire Section 16, transfers by way of inheritance, bequest or gift. The language used in the Explanation clearly uses the words "for the purposes of the Section". The said words would, therefore, mean that gifts are excluded even from the purview of all the Sub-sections of Section (16), including sub-clause 3 of Section 16. In the instant case it appears that only to defeat the pre-emption the gift deed was registered subsequently.

6. Opposite party No. 1 has acted in accordance with the aforesaid provisions of law under the Bihar Land Ceiling Act and the same was upheld by the learned Additional Collector, Garhwa rightly and justly and even in the revision petition the order of the learned Additional Collector, Garhwa, was upheld and the revision petition of the petitioner herein was rightly rejected on merits by a detail speaking order.

In the aforesaid background, this writ petition is devoid of any merits and is, accordingly, dismissed. However, there shall be no order as to costs.