(2010) 08 PAT CK 0043

In the Patna High Court

Case No : CWJC No. 13380 of 2002

Jitu Yadav APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 19, 43

Citation : (2011) 2 PLJR 677

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—The Petitioner filed an application for pre-emption u/s 16(3) of the Bihar Land Ceiling (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act). The sale deed was executed on 18.5.1995 by Respondent No. 6 in favour of Respondent No. 5. The sale deed indicates that Rs. 3,000/- was paid at the time of execution of the sale deed and Rs. 3,000/- was to be paid at the later stage at the time of exchange of consideration receipt. The said deed was registered on 8.9.1995. The Petitioner gave a notice to the purchaser u/s 19 of the Act and filed the pre-emption application on 6.11.1995. In the mean time, Respondent No. 6 filed Title Suit No. 171 of 1995 for cancellation of sale deed No. 4229 dated 18.5.1995 on the ground that the vendee had not paid the entire consideration amount and as such the title of the land cannot pass in favour of Respondent No. 5. The suit was decreed in favour of Respondent No. 6 on 2.3.1996.

2. Learned Counsel for the Petitioner submits that there is bar to filing of a suit u/s 43 of the Act, with respect to the matters to be adjudicated by the Collector or Board of Revenue and as such the Board of Revenue and the Collector could not have taken into consid-eration the decree and judgment passed in Title Suit No. 171 of 1995.

3. Section 43 of the Act reads as follows:

43. Bar of jurisdiction of Civil Court.-{1) Save and except as provided in this Act, no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or dealt with by the Board of Revenue, the appelLate authority or the Collector.

(2) No order of the Board of Revenue, the appelLate authority or the Collector made, under this act, shall be questioned in any court.

4. On the basis of the provisions of Section 43 of the Act, this Court, in a decision rendered in the case of Bhagirath Mandal and another Vs. The State of Bihar and others, , has decided that it is incumbent upon the Collector, the Appellant authority and the Board of Revenue to decide the issues including the issue of title in a proceeding u/s 16(3) of the Act. As such, learned Counsel for the Petitioner argues that the Court ought not to have relied on the decision in the suit, rather should have come to its own findings.

5. On perusal of the order of the Member, Board of Revenue, this Court notices that the Member, Board of Revenue has only noted the aspect that a title suit was filed for cancellation of the sale deed executed in favour of Respondent No. 5. The Authority has come to its own independent finding, regarding the contents and recitals of the sale deed inasmuch, as it has been stated that the sale deed in question, was a conditional sale deed, and the transfer of title and possession would be complete, on fulfillment of certain conditions. The conditions being that the vendee was to pay the remaining amount of the consideration amount to the vendor, in order to become the absolute owner of the lands which was subject matter of the sale deed. The finding of the Board of Revenue is that the consideration amount did not pass from the vendee to the vendor and as such the transaction of sale was not complete. Relying on the decision rendered in the case of Amarendra Kumar Singh Vs. The Additional Member Board of Revenue and Others, , the conclusion of the Revenue Authorities is that since the transaction has remained incomplete and title did not pass to the vendee (purchaser), as such the application u/s 16(3) of the Act would not be maintainable.

6. In the case of Arnarendra Kumar Singh, the facts are somewhat similar to the facts of the present case wherein the Court has noticed that the document was of a conditional sale, depending on certain events, to complete the transaction and as such this Court held that the application for pre-emption would be defeated, if the title did not pass to the vendee.

7. In view of the discussions made above, I find no illegality in the orders of the Collector and the Member, Board of Revenue and as such this application is dismissed.

