
(2010) 09 PAT CK 0147

In the Patna High Court

Jugeshwar Singh alias and Jageshwar Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0147

Final Decision : Dismissed

Judgement

Birendra Prasad Verma, J.—None appeared on behalf of the appellant as also on behalf of respondent No. 7. Learned Standing Counsel No. 24, representing respondents No. 1 to 4 and learned Counsel appearing on behalf of respondents No. 5 & 6, have been heard.

2. The petitioner of C.W.J.C. No. 976 of 2000 has preferred this intra court appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, challenging the validity and correctness of the order dated 09.02.2005, passed by the learned writ Court dismissing the aforesaid writ petition, after recording a finding of fact that the pre-emption application filed on behalf of the writ petitioner was not maintainable in the facts and circumstances of the present case.

3. The relevant facts necessary for disposal of the present appeal are portrayed hereunder:

Respondent No. 7, Braj Kishore Prasad, executed altogether four sale deeds on 30.12.1992, in favour of respondents No. 5 and 6, transferring his share of lands of Khata No. 482, appertaining to khesra No. 2603, situate at village Majidpur, P.S. Hilsa, District Nalanda. Out of those four sale deeds, one sale deed with respect to 133/4 decimals for a consideration amount of Rs. 9500/-, and another sale deed with respect to 10 decimal of lands for a consideration money of Rs. 7000/-, were executed in favour of respondent No. 5, Surya Narain Prasad, whereas two separate sale deeds transferring 10 decimals each from the same plot of land for a consideration money of Rs. 7000/- each were executed in

favour of respondent No. 6, Binod Kumar, and they claim to have come in possession over the lands purchased by them through aforesaid separately executed four sale deeds. All the aforesaid four sale deeds dated 30.12.1992 were duly registered on 08.09.1995. The appellant- writ petitioner claiming to be co-sharer of the vendor as also the boundary raiyats of the vended plots filed four separate applications 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 "Land Ceiling Act"), claiming his right of pre-emption. All the four applications were filed on 06.12.1995, in the Court of learned D.C.L.R., Hilsa (Nalanda), giving rise to Pre-emption Case No. 5 of 1995-96, 6 of 1995-96, 7 of 1995-96 and 8 of 1995-96.

4. On receipt of notice, respondents No. 5 and 6 entered appearance, filed their show-cause resisting the claim of pre-emption made on behalf of the appellant, and prayed for dismissal of all the pre-emption cases on following grounds, besides others:

(A) In view of separate purchases made by respondents No. 5 & 6 through four separate registered sale deeds, they have themselves become boundary raiyats of the vended plots.

(B) Before the pre-emption cases were filed on 06.12.1995, they had already executed a deed of gift dated 28.06.1995 gifting 333/4 decimals of land out of total area of 433/4 decimals to their mother Parmeshwari Devi . Therefore, in view of Section 16(1) Explanation of the Land Ceiling Act pre-emption applications were not maintainable.

(C) Plot No. 2612 belongs to them, which is situate east of the vended plot No. 2603, intervened by Plot No. 2610, which is a Pyne and has become non-existent with the passage of time and has merged with Plot No. 2612 and on that ground they further claimed that they are the boundary raiyats of all the vended lands of plot No. 2603.

5. Learned D.C.L.R., with consent of all the parties, heard all the aforesaid four pre-emption cases analogously and disposed of the same by a common order dated 27.05.1996. Learned D.C.L.R. came to a finding that the appellant was the boundary raiyat of all the vended plots and, therefore, he allowed the claim of pre-emption directing respondents No. 5 and 6 to execute the sale deed on the same terms within a period of one month in favour of the appellant.

6. Respondents No. 5 and 6, being aggrieved by the order of learned D.C.L.R., filed Ceiling Appeal No. 23 of 1996-97, which was finally heard by learned Additional Collector, Nalanda, and was allowed by order dated 01.12.1998, reversing the order of the learned D.C.L.R. Learned Additional Collector came to a finding that the appellant was not the boundary raiyat of the vended plots rather Respondents No. 5 and 6 were already having their land in plot No. 2612, which was amalgamated with plot No. 2610, and is situate east of the vended plots. The appellant challenged the aforesaid appellate order u/s 32 of the Land

Ceiling Act in Boards Case No. 271 of 1998, which was finally dismissed by order dated 10.12.1999 by the learned Additional Member, Board of Revenue, Bihar, Patna. After hearing the parties, respondent Additional Member, Board of Revenue, came to a finding that the pre-emption application filed on behalf of the appellant was not maintainable on various grounds, indicated in that order. The appellant, being aggrieved by the aforesaid appellate order and Revisional order, preferred C.W.J.C. No. 976 of 2000, which was finally heard by learned Single Judge and has been dismissed by the impugned order dated 09.02.2005.

7. I have perused the materials available on record and considered the submissions advanced by the learned Counsel appearing for some of the parties. Learned Counsel appearing on behalf of respondents No. 5 and 6 has supported the order passed by the learned Writ Court and has placed reliance on the following judgments:

- (i) Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others,
- (ii) Ram Roop Yadav Vs. The State of Bihar and others,
- (iii) Dina Nath Prasad Vs. State of Bihar and Others,

8. Now it is well settled and hallowed principle of law that right of pre-emption is a very weak right and that can be defeated by any legitimate means. A Full Bench of this Court in Ram Chandra Shrivastava (supra) has laid down the following principles:

(A) The crucial date for consideration of claim of pre-emption u/s 16(3) of the Land Ceiling Act is not the date of transfer of the lands , but the date of filing such application. Until a proper application with requisites is filed by the co-sharer or the adjoining raiyat claiming reconveyance of the transferred land, such right can legitimately be defeated by some subsequent event taking place after transfer of such land.

(B) Right of pre-emption is a very weak right and it can be defeated by any reason of an event happening subsequent to such transfer.

(C) The right of pre-emption can be defeated if the purchaser himself acquires a right or status equal to that of the pre-emptor.

(D) Claim of partial pre-emption with respect to the part of the properties was not maintainable.

9. I am tempted to quote relevant portion of paragraphs-12 and 15 of the judgment of Full Bench in Ram Chandra Shrivastava (supra) case, which is being reproduced herein below:

12. It will thus be seen that it is of the very essence of the right of pre-emption that it is a very weak right, that it must subsist at the time when the pre-emptor seeks to exercise it and that it can be defeated if by that time the person against whom it is sought to be exercised has acquired a right or status which is equal to

that of the pre-emptor....

15. ...Under Section 16(3) of the Act, the right of pre-emption which accrues to a co-sharer or a raiyat holding land adjoining the transferred land must subsist not only on the date of execution and registration of the document of transfer, but also on the date of the application which must be made within three months from the date of registration thereof. This right is ipso facto defeated if before the date of the application the transferee himself acquires the same status in relation to the transferred land as the applicant.

10. The similar issues came up for consideration before a Division Bench of this Court in the case of Ram Rup Yadav (Supra). In that case the lands were transferred by two separate sale deeds by the same transferor in favour of the common purchaser. It was held in that case that a purchaser of two adjoining plots purchased on the same day himself becomes the holder of an adjoining plot in order to defeat the claim of pre-emption, which is filed subsequently by another adjoining raiyat. Accordingly, it was held that pre-emption application was not maintainable.

11. Now coming to the facts of the present case, it is apparent that respondents No. 5 and 6 have purchased the lands in question from respondent No. 7 through four separate registered sale deeds on the same day and, therefore, they have themselves acquired the status of the boundary raiyats of each other. Admittedly lands covered by the aforesaid four registered sale deeds are adjacent to each other. Respondent Nos. 5 and 6, being the purchasers as also the boundary raiyats of the vended lands, have certainly acquired better right than that of the appellant and they can legitimately defeat the claim of Pre-emption of the appellant on that ground alone. Furthermore, by concurrent findings of facts recorded by the appellate court, the revisional court as also the Writ Court, the claim of pre-emption made by the appellant has been held to be not maintainable. There are no other materials available on record to take a different view.

12. For the reasons recorded above, and in view of the settled principle of law that right of pre-emption is a weak right, this Court does not find any infirmity in the order passed by the learned Writ Court.

13. In the result, this appeal fails and is accordingly dismissed. The order of the learned Writ Court dated 09.02.2005 is hereby affirmed. In the facts and circumstances of the case, there shall be no order as to costs.

S.K. Katriar, J.

14. I agree.