

(1993) 02 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5887 of 1992

Kalimuddin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10(2), 10(3), 5(1)(iii)

Citation : (1993) 2 PLJR 180

Hon'ble Judges : S.P. Sinha, J; R.M. Prasad, J

Bench : Division Bench

Advocate : Anil Jaiswal and Shamshad Alam, for the Appellant; B.P. Verma for the State, for the Respondent

Judgement

S.B. Sinha, J.—The question involved in this application is as to whether insufficient consideration paid by his vendee to his vendor is sufficient to annul the deed of sale by the Collector of Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961, (hereinafter referred to as the said Act) in exercise of his power conferred upon it u/s 5 (1) (iii) thereof. Bereft of all unnecessary details, the fact of the matter is as follows :

By a registered deed of sale dated 12.7.1962 the petitioner purchased 20.60 acres of land from respondent No. 5 for a consideration of Rs. 6000/-.

A proceeding under the said Act being Ceiling case No. 36 of 1982-83 as against the respondent No. 5 was initiated. In that proceeding an enquiry u/s 5(1) (iii) of the said Act was also initiated.

By an order dated 20th June, 1984 the respondent no. 4 held that the deed in question is invalid on the ground that the sale price is low and his house is far away from the place where the lands are situate.

Allegedly a spot inspection was made but no memorandum of inspection has been drawn up in relation thereto.

A draft publication was made u/s 10(2) of the Act.

The petitioner filed an objection u/s 10(3) of the Act but the respondent No. 4 rejected the petitioner's objection by his order dated 25.1.1985.

2. The petitioner preferred an appeal against the said order dated 25.1.1985 being Appeal Case No. 202/85-86 which was dismissed by an order dated 26.12.1988.

3. The petitioner thereafter filed a Revision application being Revision case No. 42/89 which was disposed of by an order dated 19.4.1989. The petitioner filed a writ petition in this Court being CWJC No. 5689 of 1989 which was allowed by an order dated 22.3.1991.

4. By reason of the said order, the petitioner was directed to file a certified copy of the order passed by the Additional Collector and the Respondent no. 2 was directed to dispose of the said matter on merits.

5. The respondent No. 2 thereafter heard the Revision application and by an order dated 20th March, 1992 dismissed the same.

6. Mr. Anil Kumar Jaiswal, Learned Counsel appearing on behalf of the petitioner submitted that insufficiency of the consideration amount by itself is not a ground to hold that the transfers had been made with a view to defeat the provisions of the Act and thus the impugned order must be held to be vitiated in law.

The Learned Counsel in support of this contention relied upon a decision of this Court in Bachchan Singh Vs. The S.D.O. & Ors. reported in 1977 BBCJ 728: 1978 PLJR 375 as also an order dated 5.9.89 (Bibi Jnhan Ara Khatoon v. the State of Bihar & Ors.) in CWJC No. 5358 of 1989.

7. The Learned Counsel further submitted that the finding of the court below that the petitioner is not in possession of the lands is without any evidence and inasmuch as the purported spot inspection was done behind the back of the petitioner.

8. Section 5(1) (iii) of the said Act reads thus :

5(1) (iii) : Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority the Collector shall have power to make enquiries in respect of any transfer of land by a land-holder whether by a registered instrument or otherwise made after 22nd day of October, 1959, and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in excess of the Ceiling Area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this Section.

9. Admittedly the petitioner purchased 24.60 acres of land from respondent No.

5 for a sum of Rs. 5000/-. The petitioner has not annexed a copy of the said deed of sale alongwith the writ application.

10. By reason of the aforementioned purported deed of sale dated 12.7.1962 situate in Auria P.S. Rupauli Sub Registry Dhamdan, District Purnea of Khata No. 133, Plot Nos. 49, 49/563, 49/564, 49/565, 49/566, 49/567, 49/568, 49/569, 49/570, 49/571, 49/579, 48/572, 48/573, 48/574, 48/575, 48/576, 48/577 and 48/578 having an area of 1.56, 1.89, 1.01, 0.20, 1.19, 1.12, 3.08, 2.36, 1.41, 1.60, 0.48, 1.50, 1.37, 3.27, 0.79, 0.55, 0.66 and 0.56 total 24.60 acres.

11. Thus the petitioner purchased 18 plots by reason of the aforementioned deed of sale.

12. From a perusal of the impugned order as contained in Annexure-1 to the writ application, it appears that the same was passed on the following grounds : (i) From a perusal of the impugned order as contained in Annexure-1 to the writ application, it appears that the same was passed on the following grounds : (i) the price is low; (ii) the petitioner resides in Maheshpur P. S. Korha within the district of Katihar whereas the lands are situated in the village Sheikhpura P.S. Bhawanipur District Purnea.

13. It was held that 24.60 acres of land in question are said to be benami. Surprisingly the petitioner did not question the said order before the Appellate court. He, as noticed hereinbefore, allegedly filed an objection u/s 10(3) of the Act, although from the order-sheet dated 25.1.1985 as contained in Annexure-2 to the writ application it appears that the said objection was filed by the land-holder.

14. However, from the said order, it appears that the appellate authority has held that in the proceeding u/s 5(1) (iii) of the Act all the objections raised by the concerned parties have been considered.

15. In this situation, evidently the appeal preferred by the petitioner against the order dated 25.1.1985 as contained in Annexure-2 to the writ application was not maintainable.

16. However, it is evident that the Collector has entertained the appeal. Further from a perusal of the order passed by the Appellate authority it appears that in the land ceiling proceeding several issues have been raised therein namely : (i) Whether the applicant has possession over the land and if so how he gets the land cultivated?

(ii) Whether the consideration paid for purchase of the land is on a low side and what was source of income for purchasing the land?

(iii) Whether the applicant could produce any document in support of his purchase?

17. The Appellate authority held that the question raised are very relevant for the purpose of considering as to whether transfers have been effected in order to

defeat the provisions of the Act.

18. The Collector has found, that the price of the land appears to be only Rs. 250/- per acre whereas the normal price is 2000 per acres. On the said land the petitioner does not have any house nor he has been able to state before the court below as to how he gets the land cultivated.

19. In this situation, the Collector dismissed the appeal.

20. The Member Board of Revenue inter alia held that Md. Umar Farooque has made a number of transfers after 22.10.1959.

It has further been found that the land-holder did not divest himself of these lands. The Member, Board of Revenue has held that the registered deed and the rent receipts themselves do not show that the transaction was a genuine one and the same was not actuated by ulterior consideration.

It has further been found that the consideration money is also nominal and illusory. The transferee was not found to be in possession of the lands.

21. In *Bachchan Singh Vs. S. D. O.* reported in 1977 BBCJ 728 : 1978 PLJR 375 it has been held that where no evidence was adduced before the Sub-divisional Officer to show as to what was the true value of the lands of the same quality situated in the village and thus the factor which weighed with the authorities being on pure surmises and conjectures could not be availed as the basis for annulling the transaction.

It was further held that execution of several documents on the same day by the land holder may not be a relevant factor. It was further held that so far as the report of the Anchal Adhikari on possession of the land is concerned, the same cannot be said to be conclusive evidence.

The aforementioned decision has followed an earlier decision of this Court in *Shiv Narain Khawaray & others Vs. State of Bihar and others* reported in 1977 BBCJ 453.

22. Ordinarily, this Court would not have interfered with the impugned order, keeping in view the fact that the petitioner had no locus standi either to file a petition u/s 10(3) of the Act or to prefer an appeal and revision against the order rejecting the said objection.

23. However, in view of the fact that the appeal and the revision were entertained by the appellate and the revisional authority, in our opinion, the interest of justice will be sub-served if the impugned orders are set aside and the matter is remitted to the Collector for a fresh decision in accordance with law.

24. The Collector shall re-start the proceeding u/s 5(1) (iii) of the Act and allow the parties to adduce their respective evidences.

It would also be open to the Collector to make a local enquiry and/or spot verification in presence of the petitioner.

25. It would also be open to the Collector to ascertain the market value of the land at the time of sale and other relevant factors. This application is, therefore, disposed of with the aforementioned directions, but without any order as to costs.

R.M. Prasad, J.

I agree.