

(2008) 09 PAT CK 0129

In the Patna High Court

Case No : CWJC No's. 1442, 1443, 1382, 1448 of 2001

Laldhari Singh @ Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 2(f)

Citation : (2008) 4 PLJR 779

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Dev Govind Prasad, Jai Prakash Singh and Arti Singh, for the Appellant; Kamal Nayan Chaubey, Ashok Kumar Pandey and M/s Om Prakash Upadhayay, Arun Kumar Pandey for the State, for the Respondent

Judgement

V.N. Sinha, J.—Heard Learned Counsel for the parties. Petitioner is the purchaser of 35 decimals of land in plot no. 2202, 2243 appertaining to Khata Nos. 329 and 330 of village Bhaluahi, Police Station Indrapuri, District Rohtas from Respondent No. 3, who executed four sale deeds dated 11.4.1994. He is aggrieved by the order dated 24.4.2000, Annexure-3, passed by the Additional Collector, Rohtas, whereunder he set aside the order dated 30.4.1997, Annexure-2, passed by the DCLR, Dehri and allowed the pre-emption case directing the purchaser to transfer the lands in question in favour of the pre-emptor. He is further aggrieved by the order dated 6.11.2000, Annexure-4, passed by the Additional Member, Board of Revenue dismissing his revision application challenging the appellate order dated 24.4.2000, Annexure-3.

2. In order to consider the correctness or Otherwise of the two orders dated 24.4.2000 and 6.11.2000, Annexures-3 and 4, it is necessary to state a few facts. Pre-emptor, Respondent No. 5 filed four pre-emption case on 5.8.1995 impugning the aforesaid four sale deed dated 11.4.1994 before the DCLR, Dehri asserting that perusal of the sale deed itself would indicate that his father, Shiv Dayal Pandey is shown on the northern and southern boundary of the vended

land and claimed right to preempt with direction to the purchaser to execute sale deed in his favour. The DCLR issued notice to the petitioner-purchaser. Petitioner-purchaser filed his objection stating that the lands in question is homestead land not connected with agriculture. He further stated that pre-emptor is neither the co-sharer of the vendor nor is the adjoining raiyat of the vended plot. It was also submitted that by virtue of subsequent purchase of 5 decimals of lands in plot no. 2506 appertaining to Khata No. 330 in the same village vide registered sale deed dated 27.5.1994, petitioner herself has become boundary raiyat of the lands in question, as such, pre-emption case filed against her on 5.8.1995 is fit to be dismissed. Petitioner-purchaser further submitted that the father of the pre-emptor, Shiv Dayal Pandey died 30-40 years earlier and after his death, there is partition amongst the three sons of Shiv Dayal Pandey and the pre-emptor is not the boundary raiyat of the vended plots as after the partition between the brothers, the adjoining plot has been allotted to his other two brothers, who have not joined the pre-emption case and on this score as well the pre-emption case be dismissed. To verify the aforesaid contention of the petitioner that the subject matter of the sale deed was not connected with agriculture as also the fact that there was partition between the sons of Shiv Dayal Pandey after his death and they were independent of each other, the DCLR called for a report from the Circle Officer, Dehri, who having made enquiry submitted the report which is contained in Annexure-1 to this application. In support of his aforesaid contention, petitioner also submitted before the certificates granted by the Mukhija and the Sarpanch, which is dated 16.2.1997, 17.2.1997 and is contained in Annexures-1/A and 1/B. The Collector under the Act/DCLR heard the parties and under order dated 30.4.1997, as contained in Annexure-2 dismissed the pre-emption case holding that the lands in question were homestead and not amenable to the provisions contained in sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act). Against the order dated 30.4.1997, Annexure-2, private Respondent No. 5 filed appeal before the Collector, Rohtas, who transferred the same for hearing before the Additional Collector, Rohtas and the Additional Collector, Rohtas under orders dated 24.4.2000, Annexure-3 allowed the appeal holding that the subsequent purchase made by the petitioner under registered sale deed dated 27.5.1994 of 5 decimals of land in plot no. 2506 appertaining to Khata No. 330 is of no use to the petitioner for defeating the preemption right of the private Respondents, as according to the learned Additional Collector, Rohtas subsequent purchase of adjoining lands cannot be relied upon to dismiss the claim for pre-emption. He further held in the order dated 24.4.2000, Annexure-3 that from the documents on record, it appears that the vended lands are agricultural land and the finding that it is homestead land not connected with agriculture is against the records. Having held as above, he allowed the appeal as also the pre-emption case. Against the appellate order dated 24.4.2000, Annexure-3, petitioner filed Board Revision case and the Additional Member, Board of Revenue under orders dated 6.11.2000, Annexure-4 dismissed the revision case holding in paragraph 4 of his order that the private Respondent No.

5 is on the boundary of the vended plot as there has been no partition between the sons of Shiv Dayal Pandey and if there is no partition then each of the three sons have their interest in every nook and corner of the adjoining plot recorded in the name of their father. In paragraph 5, learned Additional Member, Board of Revenue held that by virtue of subsequent purchase of 5 decimals of land under sale deed dated 27.5.1994, petitioner does not become boundary raiyat of the two vended plots. In paragraph 6 of his order, learned Additional Member, Board of Revenue held that the lands in question are homestead land of a landholder and are thus within the definition of land as defined u/s 2(f) of the Act and is within the sweep of the provisions contained in sub-section (3) of Section 16 of the Act.

3. Learned Counsel for the petitioner has assailed the appellate order dated 24.4.2000, Annexure-3 and the revisional order dated 6.11.2000, Annexure-4 on the ground that while allowing the pre-emption case under the appellate order dated 24.4.2000, Annexure-3 as also while affirming the appellate order under orders dated 6.11.2000, Annexure-4, the courts below did not take into account the report of the Circle Officer, Dehri contained in Annexure-1, which was submitted after local inspection/enquiry by the Circle Officer confirming the fact that after the death of Shiv Dayal Pandey, there was partition between his three sons and they were independent of each other and petitioner had no joint interest in the plot adjoining the vended plot with his brothers. According to the Learned Counsel, had the report of the Circle Officer, Dehri, Annexure-1 taken into account then the finding that petitioner, pre-emptor is the adjoining raiyat of the lands in question could not have been recorded unless there was some better material on the record of the pre-emption case to dislodge the findings contained in the report of the Circle Officer. According to the Learned Counsel for the petitioner, the report of the Circle Officer and the certificates granted by the Mukhiya and the Sarpanch, as contained in Annexures-1/A and 1/B are documentary evidence and party who wants to dislodge the same has to rebut the contents by adducing further evidence and until the findings recorded in the report of the Circle Officer, Annexure-1 and the certificates of the Mukhiya and the Sarpanch, Annexures-1/A and 1/B are dislodged by any other material, the report and the certificates have to be accepted by the courts below submitted in the official discharge of duty. He further submitted that perusal of the report of the Circle Officer and the certificates granted by the Mukhiya and the Sarpanch would indicate that the lands in question are vacant piece of land over which only trees have been grown and during the survey and consolidation operations the land has been kept beyond the chak Khatiyani as the same is feerani land meant for habitation. As litigation had begun soon after the purchase, the lands could not be used for raising the house, but the fact remains that the lands in question are in the midst of a village where there is hardly any scope for agricultural operation and this aspect has been confirmed in the report of the Circle Officer and the certificate of Mukhiya and Sarpanch and until any other evidence to dislodge the contents of the report/certificate is produced by the pre-

emptor, the land has to be taken as a land meant for only building purposes.

4. Counsel for the private Respondent No. 5 has submitted that the appellate court as also the revisional court, which are the final courts of fact have considered the matter in detail and this Court should not interfere in the matter as the lands in question have been found by the revisional authority to be the land of a landholder and within the purview of the pre-emption provisions. He further submitted that the appellate court and the revisional court while holding that private Respondent No. 5 is the boundary raiyat of the lands in question did not take notice of the report submitted by the Circle Officer as also the certificates granted by the Mukhiya and the Sarpanch then this Court may remand the matter to the Board of Revenue so that the certificates may be considered and final orders passed once again.

5. I regret to accept such submission of the Learned Counsel for the private Respondent No. 5. the pre-emptor as the report and the certificates were submitted in the court of the Collector under the Act in response to his direction contained in letter dated 14.11.1996, as such, the report and the certificates, which goes to the root of the matter is first required to be considered by the authority who had called them for consideration. In the event the Collector under the Act is satisfied that after the death of Shiv Dayal Pandey 30-40 years ago there was partition between his three sons then the pre-emption case has got to be dismissed as the other two brothers of the pre-emptor had not joined him in the pre-emption case and there is nothing to establish that pre-emptor is the boundary raiyat of the vended lands. Thus, in order to appreciate the case of the purchaser that there is a partition between the three sons of Shiv Dayal Pandey as has been reported under Annexures-1, 1/A and 1/B, the matter has to be remanded back to the DCLR, Dehri, Respondent No. 4. Accordingly, the impugned orders dated 24.4.2000 and 6.11.2000, Annexures-3 and 4 are set aside and the matter is remitted back to the DCLR, Dehri, Respondent No. 4 to reconsider the matter in the light of the observations made in paragraph 6 above at the earliest in any case within three months from the date of receipt/production of a certified copy of this order. The DCLR shall be obliged to pass order after hearing the parties as also after giving them opportunity to establish the factum of partition or otherwise by leading further evidence. While disposing of the matter, he shall also be at liberty to consider other points.