(2007) 01 PAT CK 0140

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6125 of 1988

Laxman Mishra and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 29-01-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(3), 30, 32
Constitution of India, 1950 — Article 226, 31B

Citation : (2007) 2 BLJR 959 : (2007) 2 PLJR 205

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : Prakash Shrivastava and Pravin Kumar, for the Appellant; Binodanand Mishra, JC to SC2, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—By this application under Article 226 of the Constitution of India, the petitioners, adjoining owner of the land, have sought quashment of the arrange dated 21.1.1988, passed by Respondent No. 3, Additional Member, Board of Revenue, Bihar, Patna, in Case No. 106 of 1986 u/s 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short : the Act), which reversed the concurrent findings of facts of the two Revenue authorities, on the ground that the order passed in revision case is illegal and contrary to the factual findings.

2. The petitioners are purchasers of the adjoining land measuring 27 decimals of land of Revisional Survey Plot No. 3900 by virtue of registered deed on 17.7.1984. The subject matter of litigation, which is also an agricultural property is situated near the boundary of the property purchased by the petitioners, which came to be purchased by respondent No. 5 by a deed on 2.1.1985.

3. Being aggrieved by the purchase, by Respondent No. 5, an outsider, the petitioner made an application in terms of the provisions of Section 16(3) of the

Act to the Deputy Collector, Land Reforms, Sitamarhi (West), which came to be allowed by order dated 8.10.1985 in Land Ceiling Case No. 4 of 1985, and it was further confirmed in appeal, u/s 30 of the Act by order dated 22.1.1986 in Ceiling Appeal No. 15 of 1985 by the Additional Collector, Sitamarhi.

4. Being aggrieved by the said order, respondent No. 5 purchaser, preferred a revision u/s 32 of the Act successfully. Therefore, the concurrent findings of fact recorded by the two Revenue authorities in terms of the provisions of Section 16(3) and Section 30 of the Act came to be reversed in revision u/s 32 of the Act which is, directly and precisely, under challenge in this application under Article 226 of the Constitution of India.

5. Learned Counsels for the parties are heard. This Court has dispassionately examined the factual profile and testimonial collection and relevant provisions of law, as well as text and tenor of the impugned order in revision. Let it be stated at the outset that the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962), which was assented to by the President on the 8th March, 1962, is an Act to provide for fixation of ceiling, restriction on sub-letting and resumption by certain raiyats, for personal cultivation of land, acquisition of status of raiyat by certain under-raiyats and acquisition of surplus land by the State in the State of Bihar and matters connected therewith. This Act came to be extended to the whole of the State of Bihar and it was brought into force at once.

6. This is one of the Acts which have been placed in the 9th Schedule under Article 31B of the Constitution of India.

7. Let it be highlighted that the object of enacting this Act in the State of Bihar is evident and unambiguous. The object is clear. Under it any land in excess of the ceiling area ceases to belong to the owner with effect from the appointed day. Ordinarily, the word ''disposition'', in relation to property would mean disposition made by a deed or will. Even if possession of surplus land is given in execution of partition decree, the "disposition" will be invalid under Ceiling laws and will be of no effect. The administrative mechanism has already prescribed, under the Act, legal redressal for the aggrieved persons.

8. In Chapter V of the Act, there is restriction on future acquisition. Section 16 of the Act, undoubtedly, prescribes restriction on future acquisition by transfer etc. Clause (i) of Sub-section (3) of Section 16 of the Act provides clear statutory restriction that when any transfer of land is made after the commencement of the 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 in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the conveyance or deed.

9. The Revenue authority prescribed under the Act is competent to pass orders

as he is empowered u/s 16 of the Act. Accordingly, the writ petitioners had applied for re-transfer and cancellation of the purchase made by respondent No. 5 on 2.1.1985 on the premises that the petitioners are adjoining land owner and raiyat who had purchased the property on 17.7.1984. On finding of fact, the Deputy Collector, Land Reforms, under the Act found favour with the petitioners and granted the relief as prayed for in the application which came to be questioned before the Appellate authority u/s 30 of the Act, unsuccessfully, by respondent No. 5. Being further aggrieved by the order of the Appellate authority, the respondent No. 5 questioned its legality and validity by filing a revision before the Board of Revenue u/s 32 of the Act. The revision came to be allowed.

10. This Court has considered the merits of the revisional order and has no hesitation in finding that the concurrent findings of fact recorded by the two courts of revenue authorities i.e. Deputy Collector, Land Reforms and the Collector in favour of the petitioners were set aside illegally without application of mind. The respondent No. 5 has not appeared and desisted the claim here. Neither the State nor respondent No. 5 has filed counter affidavit. Apart from that, from the evaluation of the factual profile and the consideration of the merits of the matter, this Court is convinced and satisfied that the petitioners, being adjoining raiyat or land owner of the land, are entitled to claim cancellation of the sale deed din favour of respondent No. 5.

11. Accordingly, this petition is allowed with costs. The respondents authorities, as well as respondent No. 5 are directed to comply with the order recorded by the Deputy Collector, Land Reforms, which was affirmed in the appeal, and is confirmed by this Court by setting aside the order of the Board of Revenue. Rule is made absolute. No costs.