
(2010) 07 PAT CK 0114

In the Patna High Court

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

Laxman Mishra and Rakesh Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 32

Citation : (2011) 1 PLJR 131

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Prakash Shrivastava and Suraj Samdarshi, for the Appellant; Anil Kumar Jha, G.A. II, for the Respondent

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—This application was originally heard by a Bench of this Court on 29th January, 2007 and the order of the Additional Member, Board of Revenue was set aside by the learned Single Judge. The matter traveled before the LPA Bench and the LPA Bench remanded the matter back after quashing the order dated 29th January, 2007 passed by the learned Single Judge on the ground that the respondent No. 5 had died during the pendency of the writ application and the matter proceeded without the heirs of respondent No. 5.

2. This application has been filed challenging the order of the Additional Member, Board of Revenue passed u/s 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act).

3. The case of the petitioners is that they had purchased 27 decimals of land out of 57 decimals of plot No. 3900, Khata No. 97 situate in the village Rampur Gangauli. The husband of respondent No. 5 by a registered sale deed purchased 30 decimals of land in plot No. 3900. The petitioners filed an application for pre-emption which was allowed by the Land Reforms Deputy Collector and the

Collector vide orders dated 08.10.1985 and 22.01.1986 respectively.

4. The case of respondent No. 5 is that she is also a boundary raiyat of plot No. 3900 and as such no application for pre-emption would be maintainable. Admitted position is that the respondent No. 5 is the owner of plot No. 3913 which according to her is the boundary of plot No. 3900.

5. The Land Reforms Deputy Collector and the Collector had allowed the pre-emption application on the basis of a survey map which was produced before them. It is said that the boundary line on the northern boundary of plot No. 3900 has been marked as RAF and as such it does not touch the boundary of plot No. 3913. Similarly, it is said that boundary of plot No. 3913 touches the disputed plot from the southern side and has also been marked as RAF. On the basis of the aforesaid facts, it has been held that the respondent No. 5 is not in the boundary of plot No. 3900.

6. The orders aforesaid were challenged before the Additional Member, Board of Revenue by the respondent No. 5. The survey map was produced before the Additional Member, Board of Revenue and he had given his findings at paragraph Nos. 4 and 5 of the order dated 21.01.1988, which reads as follows:—

4. In the aforesaid circumstances both the parties have admitted that their cases hinges on the fact whether the plot No. 3913 touches the vended land which is in the eastern portion of plot No. 3900. A map of the village has been filed and it shows that the original boundary of plot No. 3913 has been cancelled by means of 'RAF' and a new boundary line has been drawn towards the east of it enhancing the size of plot No. 3913.

5. According to the established practice in the survey operation 'RAF' on a line amounts to its cancellation and in view thereof the SP 3913 gets extended towards east and it comes in clear contact with plot No. 3900. As such the purchaser himself is a boundary raiyat and no case of pre-emption can lie against him.

7. The petitioners have not produced the survey map which would indicate that the land of the respondent No. 5 is not on the eastern boundary of plot No. 3900 as recorded in the order of the Additional Member, Board of Revenue and as such this Court agrees with the findings of the Additional Member, Board of Revenue, inasmuch as it has been clearly stated that despite the RAF on the boundary lines, the new boundary line of plot No. 3913, belonging to the respondent No. 5, is extended on the eastern side and touches the boundary of plot No. 3900. It may be noted that the new boundary lines of the map were completely ignored by the Land Reforms Deputy Collector and the Additional Collector, Sitamarhi

8. In view of the aforesaid facts, I find no merit in this writ application as the respondent No. 5 is also in the boundary of plot No. 3900 purchased by her husband and as such the application of pre-emption would be maintainable u/s 16 (3) of the Act.

9. This application is accordingly dismissed.