

(2007) 02 PAT CK 0074

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6549 of 1988

Md. Alam

APPELLANT

Vs

Addl. Member Board of Revenue and Others

RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3), 2
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34

Citation : (2007) 2 BLJR 1730 : (2007) 2 PLJR 207

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

Bench : Single Bench

Advocate : Yogendra Mishra and Mithilesh Kr. Khare, for the Appellant; J.C. to G.P. 4, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—By this writ application under Articles 226 and 227 of the Constitution of India, challenge is against the order recorded by the Additional Member, Board of Revenue, Bihar, Patna in Case No. 375 of 1986 dated 9.11.1987, in revision, in which the order of the appellate authority came to be quashed holding that the application for pre-emption is justified.

2. Let there be few material facts, relevant and material, for consideration of the merits of this writ petition.

(i) the petitioners claimed to have purchased a narrow strip of homestead land situated in the midst of the village bearing plot No. 381 measuring 14 dhurs (a measurement locally used for measurement of land) for Rs. 5000/- for the purpose of constructing his residence and he has also constructed a hut on the said land.

3. It is the contention that he is a landless person who purchased the questioned land for Rs. 5000/- for residential purposes, and, therefore, it is homestead land

of a landless person and he does not fall within the statutory definition and therefore, the right of pre-emption exercised by respondent No. 4 is not maintainable.

4. Respondent No. 5 Maulana Mahboob Raja sold the questioned land out of plot No. 381 (old) to the petitioner for a consideration of Rs. 5000/- by virtue of a sale deed dated 14.3.1984. The respondent No. 4, one Md. Musa Askari filed an application for exercise of his pre-emption right within the period of limitation before the competent authority u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 ((In short "the Act of 1961") contending that he is adjoining owner and raiyat in so far as the transferred land is concerned.

5. The application was contested by the petitioner and it came to be decided by the Deputy Collector, Land Reforms, under the Act of 1961 who allowed the application for pre-emption of respondent No. 4. Respondent No. 4 is an adjoining owner near the transferred land and, as such, a raiyat and he is entitled to file an application u/s 16(3) of the Act of 1961, which came to be decided in his favour by the first revenue authority.

6. Being aggrieved by the order of the first revenue authority dated 5.11.1984, a copy whereof is placed as Annexure 1 to the petition, an appeal came to be filed. The Additional Collector, Darbhanga, in Ceiling Appeal, No. 19 of 1984-85, by order dated, 16.4.1986 (Annexure - 2), allowed the appeal of the petitioner while setting aside the order of the first revenue authority dated 5.11.1984, recorded by the Deputy Collector, Land Reforms.

7. Being dissatisfied by the order in appeal, respondent No. 4 pre-emptor carried the matter before the Board of Revenue, Bihar, Patna by filing Case No. 375 of 1986 which came to be decided, on 9.11.1987 quashing the order of the appellate authority, a copy whereof is placed as Annexure 3 to the petition.

8. The petitioner being aggrieved by the order of the Board of Revenue, has now come up before this Court by filing this writ application under Articles 226 and 227 of the Constitution of India challenging the legality and validity of the revisional order of the Board of Revenue, dated 9.11.1987.

9. Upon consideration and evaluation of the facts and circumstances following things have emerged:

(i) that the transferred land for which the right of pre-emption is sought to be exercised is homestead land. The revenue record referred and articulated in the order of the appellate authority is quite clear, and, again

(ii) it is known celebrated principles of Personal Mohammedan Law that during life time of the father, the son has no right in the property.

The contention of the petitioner is that he is a landless person, who has purchased homestead land for the use of his residence as he has separated from

his father. Simply because the property stood in the name of the father he could not be said to be a "homestead landholder" rather he would be in the category of "homestead landless."

10. It is in these contexts it would be interesting to refer the provisions of Act of 1961. Clause (f) of Section 2 defines what is land. It would be material to refer to the relevant provisions for consideration of the issue in focus. It reads hereunder:

2. Definitions.- In this Act, unless there is any thing repugnant in the subject or context:

X X X X X X (f) "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or forest land or also the land perennially submerged under water or the homestead of a land - holder

11. It is very clear from the aforesaid proposition so far as the definition of "land" is concerned that expression "land" included the homestead of a landholder only. If the homestead land is of landless person then it would not fall, precisely, within the definition of "land".

12. "Homestead" means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and includes any out building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

13. Definition of "Landholder" is provided in Clause (g) of Section 2 of the Act of 1961, which means a family, as defined in Clause (ee) of Section 2 of the Act of 1961, holding land as a raiyat or as under--raiyat or a mortgagee of land in possession of holding land permanently settled by Government or lessee of land not resumable by Government.

14. The conjoint reading of Clauses (f) and (g) of Section 2 of the Act of 1961, while viewed in the light of factual profile emerging from the record, leaves no any manner of doubt that the purchase by the petitioner is of homestead land. If he is holding the land as "landholder" then homestead land will be covered within the definition of "land" as aforesaid but the moment it is established that the person is not landholder but landless, obviously, then the question of right to exercise pre-emption would not come into fray.

15. Section 16(3) of the Act of 1961 in Chapter v, which deals with restriction on future acquisition is very important. The first revenue authority accepted and allowed the application for pre-emption filed by respondent No. 4 which was overturned by the appellate authority but the original order was restored by the revisional order of the Board of Revenue. This Court has taken into consideration all the three orders. The order recorded by the appellate authority should not have been reversed by the Board of Revenue as scope of appreciation of fact

was, virtually, nil and factual fact was recorded by the appellate authority which it is entitled to investigate into and reach to a finding of fact.

16. Section 16(3) of the Act of 1961, being the right of pre-emption came to be exercise by respondent No. 4 in respect of transferred land and the questioned land. It may be usefully quoted at this juncture, as below:

16. Restriction on future acquisition by transfer etc.

X X X X X X (3) (i) 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 said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision.

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under Clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be followed.

The Act of 1961 has a benevolent design. It provides 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 the matter connected therewith. This is nothing but in effect a social-legislation for effective agrarian reforms in the State of Bihar. The main design of the Act appears to facilitate cultivation of land by certain class of raiyats and to allow under-raiyats to acquire the status of raiyats to subserve the common good as enshrined in the Constitution. Except this, it would not be necessary to go into the historical background of the Act of 1961.

17. On finding of fact by the appellate authority, by passing the revisional order, the Board of Revenue, can be said to have exceeded its jurisdiction. No any clear, cogent, convincing and cognizable reason is assigned why the finding of fact reached by the appellate authority is overturned. Therefore, the order of the revisional court is not in consonance with the provisions of law. It is, therefore, illegal.

18. After having taken into consideration the overall factual profile emerging from the records of the present case, as well as, finding of fact recorded by the appellate authority and the supporting materials on record of this case, this Court has no hesitation in finding that the order recorded by the appellate authority allowing the appeal against the first revenue court, which allowed the application of pre-emption of respondent No. 4 u/s 16(3) of the Act of 1961, is required to be upheld by setting aside and quashing the order of the revisional court recorded by the Additional Member, Board of Revenue, in Case No. 375 of 1986 dated 9.11.1987.

19. Accordingly, the petition shall stand allowed. However, there will be no order as to costs. Rule is made absolute.