
(1979) 03 PAT CK 0002
In the Patna High Court
Case No : Civil Revision No. 1373 of 1971

Md. Ilyas	Vs	APPELLANT
Md. Hasibur Rahman and Others		RESPONDENT

Date of Decision : 27-03-1979

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 43
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1979 Patna 317

Hon'ble Judges : Lalit Mohan Sharma, J

Bench : Single Bench

Advocate : Krishna Prakash Sinha and Nageshwar Saran, for the Appellant;
Rajendra Kishore Prasad, for Opposite Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—By the impugned order, the trial court has decided a preliminary issue against the plaintiff-peti-tioner and has held that the suit is not maintainable. The plaintiff has challenged the correctness of the judgment by the present application u/s 115 of the Civil P. C.

2. The plaintiff-petitioner purchased some land detailed in Schedule "A" to the plaint from the defendants 2nd party (opposite party Nos. 2 and 3) on 21-9-1966 and the defendant No. 1 filed an application u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") before the appropriate authority, the Sub Divisional Officer, Purnea. The plaintiff's case in the plaint is that he appeared in the proceeding and pleaded, inter alia, that since the defendant No. 1 was holding land in his own name and in the farzi name of his wife, in excess of the ceiling area prescribed by the Act, his application was bound to be dismissed. The Sub-Divisional Officer, however, did not consider this aspect of the matter, but dismissed the application on another ground, which the plaintiff states was

misconceived. The defendant No. 1 filed an appeal provided under the Act which was heard and allowed by the appellate authority, the Additional Collector, Purnea by his order dated 30th March 1968. The Additional Collector found that the total area held by the defendant was less than the ceiling prescribed by law and, as such, his application could not fail on the ground mentioned above. The plaintiff thereafter unsuccessfully moved the Commissioner, Bhagalpur and the Board of Revenue, Bihar. The plaintiff has asserted that the total holding of defendant No. 1 is, in fact, in excess of the ceiling area and his application could not have been entertained or allowed. The jurisdiction of the authorities under the Act being dependent on this issue, they cannot assume jurisdiction, where they have none, by deciding the fact wrongly. The decision of the revenue authorities is, therefore, without jurisdiction and the civil court has full power to declare it so and grant the reliefs prayed for in the plaint.

3. In his written statement, the defendant No. 1 challenged the maintainability of the suit and pleaded the bar mentioned in Section 43 of the Act, which reads as follows :--

"43. Bar of Jurisdiction of Civil Court. (1) Save and except as provided in this Act, no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act require to be settled, decided or dealt with by the Board of Revenue, the Commissioner, the appellate authority or the Collector;

(2) No order of the Board of revenue, the Commissioner, the appellate authority or the Collector made under this Act shall be questioned in any Court."

4, Mr. Krishna Prakash Sinha, appearing for the petitioner, contended that the bar created by Section 43 of the Act cannot rob the Civil Court of the jurisdiction, if the order passed by revenue authorities is void. Reliance was placed on the decision in Nand Kishore Singh v. Satya Narain Singh (1978 BBCJ 555), There cannot be any objection in accepting this proposition. But the difficulty in the way of the plaintiff in the present case is that the order impugned in the present suit cannot be held to be a nullity. The plaintiff, in the present case, has relied upon the provisions of Sub-section (1) of Section 16 of the Act which says that no person shall acquire any land which, together with the land already held by him, exceeds, in the aggregate, the ceiling area. Sub-section (3) provides for the right of pre-emption of a co-sharer or a raiyat holding objecting land in case of transfer and the procedure to enforce it. If the prayer for pre-emption succeeds, the appropriate authority directs the transferee to convey the transferred land to the applicant by executing a document. The argument is that since such a transfer is not possible in favour of an applicant already holding ceiling area, in view of Sub-section (1) his application cannot be entertained. The argument is that since, as a matter of fact, the defendant No. 1 is holding more land than the ceiling area, the revenue authority could not usurp jurisdiction to allow his prayer for pre-emption by recording an erroneous finding in regard to the area of his holding. The fact concerning the actual area held by defendant No. 1 being jurisdictional fact, the Civil Court has a duty to examine it on evidence led before

it and it should declare the impugned orders as void and inoperative, if the finding, it arrives at, is against the defendant

5. The cases dealing with the special Tribunals can be, for the purpose of appreciation of the point urged, classified into three categories;

(i) Where the Legislature confers jurisdiction on such Tribunals to proceed in a case, conditional on the existence of certain state of facts;

(ii) Where a Tribunal is vested with jurisdiction including the jurisdiction to decide whether the preliminary state of facts on which the exercise of jurisdiction depends, exists; and

(iii) Where existence of certain state of facts is a condition precedent to the grant of a particular relief, but is not a condition for the exercise of jurisdiction by the Tribunal to entertain an application and decide it on merits,

6. The question whether certain state of facts exists or not can be examined by the Civil Court only in the first category of cases, as the existence of the same, as a matter of fact, is a sine qua non for the exercise of jurisdiction by the Tribunal. If the Civil Court comes to a conclusion that the essential facts do not exist, it can declare the decision of the Tribunal as without jurisdiction. In the other two cases, the Civil Court has no such power. In the second case, the finding of the Tribunal, even if erroneous, will be binding on all concerned as the Tribunal is vested with the final and exclusive jurisdiction to agitate on the point. In the last case, the decision, even if incorrect, cannot be challenged collaterally since the jurisdiction is not dependent on the question in controversy. If the relevant provisions of the Ceiling Act are examined in the background of the principle mentioned above, it will be seen that the present case cannot be brought in the first category. The relevant provisions of Section 16 of the Act (omitting the words which are not necessary in the present context) are as follows :--

"16. Restriction on future acquisition by transfer, etc. : (1) No person shall, after the commencement of this Act..... acquire.....any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area,

* * * * * (3) (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer of a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within 3 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 :

(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....."

7. The power of the Collector to entertain an application u/s 16 (3) (i) of the Aft is not dependent on the applicant holding land lesser in area than the maximum ceiling area. If the authority comes to a conclusion that the area held by the applicant is not in excess, it will allow the application and if the finding is otherwise, the petition should be dismissed. If the finding recorded by the authority is wrong, the final decision in the proceeding will be rendered erroneous. But for that reason, it cannot be held to be absolutely void. The remedy of the aggrieved party would be, besides constitutional remedy, that provided by the Act itself. The Civil Court cannot have power to correct the error, since its jurisdiction is barred expressly by Section 43. The detailed provisions of Chap. II of the Act further emphasise on the exclusive jurisdiction of the authorities under the Act to determine the area held by a land owner for the purpose of finding out whether it exceeds ceiling area or, not I, therefore, hold that in the pre-" sent case, the Civil Court has no jurisdiction to entertain the suit and the preliminary issue has been correctly decided by the Court below,

8. In the result, the revision application is dismissed, but without costs.