
(1996) 04 PAT CK 0059

In the Patna High Court

Case No : C.W.J.C. Nos. 296 and 297 of 1980

Md. Osman @ Abdul Jalil (Deceased) represented by his
L.R.S.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Citation : (1996) 04 PAT CK 0059

Final Decision : Dismissed

Judgement

Sachchidanand Jha and Aftab Alam, JJ.—Prayer for substitution of the heirs of the sole petitioner, which is not opposed by the respondents, is allowed. Let the name of the petitioner be expunged from records and in his place, those of his heirs mentioned in the substitution petition be substituted.

2. These two petitions between the same parties relating to the same dispute arising out Of analogous proceeding u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus1 Land) Act, 1961 (in short, "the Ceiling Act") have been heard together and are disposed of by this common judgment.

3. The dispute relates to Plot No. 506 or village Bishunpura within Udwantnagar Anchal of Bhojpur district." The plot having total area of 8.31 acre stood in the name of respondent No. 5. Mst. Meniran Bibi. On 1.6.76 Maniram Bibi sold 0.15 acre land of the plot to respondent No. 4 Md. Azim. The petitioner filed application u/s 16(3) of the Ceiling Act claiming right of pre-emption, i.e. re conveyance of the vended land on the same terms and conditions. The application was registered as Case No. 11 of 1976-77 Later, the purchased the remaining portion of the plot, i.e. 0.16 acre, from respondent No. 5 on 28.6.76. It was the turn of respondent No. 4 to file application for pre-emption which was registered as Case No. 17 of 1976-77. It may be stated here that the petitioner is non else than the son of respondent No. 5. His case in substance was that his mother, i.e. respondent No. 5, was merely benamidar; the real owner of the

property being the father, late Tawarak Hussain. He thus pleaded that he was "co-sharer" of the land with his mother. The claim of respondent No. 4 on the other hand was that by reason of the purchase of portion of the plot on 1.6.76, he had become adjoining raiyat of the land which was later purchased by the petitioner. He also denied that the petitioner was either a co-sharer or adjoining raiyat as on the date of the purchase by him (respondent No. 4)

4. All the three authorities below have rejected the case of the petitioner that his mother was benamidar or that he had any subsisting right or interest in the land from before. In fact, the purchase of portion of the plot from her sounds death-knell of his case. Admittedly, he had purchased the portion of the plot subsequent to the purchase by respondent No. 4. Thus he could neither claim pre-emption as being co-sharer or adjoining raiyat of the plot nor resist the claim of respondent No. 4. These aspects of the matter stand concluded by concurrent findings of fact by the authorities below.

5. The solitary submission made by the counsel for the petitioner Mr. Shashi Shekhar Dwivedi was that by reason of subsequent events, namely consolidation of the erstwhile plots of land into new plots (chaks) and change in the status quo the disputed land has lost its identity and, therefore, the order of pre-emption cannot be given effect to. He submitted that right of the pre-emptor must subsist not only on the date of the application but continue upto the final disposal of the case by the ultimate court. In support of his contention, counsel placed reliance on Ishaque Hajam v. Addl. Member Board of Revenue 1935 PLJR 323 . He also referred to the object underlying the provision of Section 16(3), which, according to him, is to consolidate the fragments or small parcels of land. That object having been achieved by virtue of orders and proceedings under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, "the Consolidation Act"), the claim of the petitioner must be held to have become in fructuous. In this regard, he referred to the non-obstinate clause as contained in Section 39 of the Consolidation Act and placed reliance on Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, .

6. The decision in the case of Ishaque Hajam (supra) rendered by a single Judge of this Court is clearly distinguishable on facts and therefore it is not necessary for us to go to the question as to whether the view expressed therein that the pre-emptor must have continued interest in the adjoining land "till the final disposal of the case by the ultimate court, i.e. Board of Revenue" is correct or not. It may nonetheless be observed that the Supreme Court decision relied upon the learned Judge in support of his conclusion Bhagwan Das (Dead) by Lrs. and Others Vs. Chet Ram, , had merely held that the pre-emptor should possess the right to pre-empt not only at the time of sale of the land by the landlord but also at the time of "passing of the decree in the suit by the trial court". It did not go to the extent of holding that the right or interest must continue till disposal by the Final Court. Be that as it may, as would appear from the facts of the case noted in the judgment in Ishaque Hajam's case, the pre-emptor had sold away

the land on the basis of which he was claiming re conveyance. In that view of the matter this Court held that the pre-emptor cannot maintain his claim on account of his having sold the property which was the very basis of the claim. In the instant case the change in the status quo, if any, is not on account of any violation of the petitioner, i.e. act of the party. It is because of circumstances beyond his control and, therefore, we do not think, on facts, the decision can be of any help to the petitioner.

7. Ordinarily the rights of the parties are to be decided with reference to the state of affairs as existing on the date of initiation of the proceeding or suit, as the case may be, unless because of some subsequent event materially altering the circumstances or any law coming in, the "parties" claim itself becomes infructuous. As to what shall be the crucial date of determination of the rights of parties in the context of the Ceiling Act come up for consideration before a Full Bench of this Court in Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others, . wherein it was held that the rights have to be determined with reference to the date of application for pre-emption. As a result of amalgamation of plots and consolidation of plot No. 506 into a bigger plot it cannot be said that the rights and liability attached to the plot to land will be extinguished. If that were so, the liability of the landholder to pay the rent for the land in question would also be extinguished, a proposition which cannot be entertained for a moment. In real terms the only consequence of the amalgamation is that another plot of land is offered to the land-owner in lieu of the plot which was earlier held by him. Therefore, we do not think that merely because plot No. 506 has changed hands and has been delivered to another person as a part of bigger plot (chak), rights of the parties would be affected.

8. Reference to the object underlying the provisions of Section 16(3) of the Ceiling Act and the non-obtained clause as contained in Section 39 of the Consolidation Act is wholly misplaced. It is settled rule of interpretation that where the statute is clear and specific, it is not necessary to go into the objects of legislation, The right of pre-emption may be weak right, it nevertheless is a statutory right and where the pre-emptor makes out a case, the Court has no option but to allow the same. Section 16(3)(iii) lays down that where application for pre-emption is allowed, in the event of refusal by the transfers to execute the sale deed in favour of the pre-emptor, the Collector under the Act, i.e. the Court has to execute the transfer deed in accordance with the procedure laid down in Order XXI, Rule 34, Civil Procedure Code. Thus, where the claim is allowed, it is the duty of the Court to see that the order is given effect to. We do not, therefore, think that a right which accrues to the pre-emptor on his claim being allowed, pre-emptor on his claim being allowed, would get lost because of orders passed in the consolidation proceedings. There is nothing in the Consolidation Act to warrant that conclusion.

9. As regards the submission on the basis of non-obstinate clause u/s 39 of the Consolidation Act, the Ceiling Act also contains similar non-obstinate clause u/s

3, as hereunder.

"Provisions of the Act to prevail over other laws.-- The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in other law, custom, usage or agreement, for the time being in force of in any decree or order of any Court.

(Proviso omitted)

The Supreme Court in *Serwan Singh's* case (supra) relief upon by the counsel, had occasion to consider a similar question. The Delhi Rent Control Act, 1958, and the Slum Area (Improvement and Clearance) Act, 1956 contained similar non-obstinate clauses. The question was whether permission as required under the Elum Clearance Act is required to be taken for eviction of the tenant from the building or land in a slum area. The Supreme Court observed as follows:

For resolving such inter se conflicts, one other test may also be applied though the persuasive force as such a test is but one of the facts which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14-A and Chapter III-A having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act, which in its present form, was placed on the statute book with effect from February 28, 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge and Sections 19 and 39 of the Slum Clearance Act contained non obstinate clauses of equal efficacy. Therefore the later enactment must prevail over the former.

In the present case the Ceiling Act was enacted in 1961 when the Consolidation Act already held the field. The framers of the law were thus aware of the non obstante clause of Section 39 of that Act and with full knowledge incorporated similar non obstante clause in Section 3 of the present Act, i.e. Ceiling Act. A learned Single Judge of this Court in *Smt. Sunania Devi and Another Vs. Additional Member, Board of Revenue, Patna and Others*, , took the same view in the context of these two very Acts. The following observations from the judgment may be quoted:

Even in a case where two enactment's are inconsistent, obedience to each of them may be possible without doing any violence to the other. It was observed by Lord Langdale. M.R. in *the Dean, etc. of Ely v. Bliss* that if two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. The Supreme Court in the case of (1) *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, also took a similar view.

10. It has, therefore, to be held firstly that there is no conflict between the provisions of the two Acts and secondly, if the conflict was there, the provisions of the Ceiling Act will have precedence. Accordingly, we do not find substance in

the contention.

11. The dispute in these two writ petitions is concluded by findings of fact and there is no scope for interference under Article 227 of the Constitution, The writ-petitions are accordingly dismissed but without any order as to cost.