

(1972) 09 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case 1892 of 1970

Md. Yusuf

APPELLANT

Vs

The Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 15-09-1972

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(2), 2

Citation : AIR 1973 Patna 97 : (1973) 6 PLJR 44

Hon'ble Judges : N.L. Untwalia, J; Akbar Husain, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and Raghib Ahsan, for the Appellant; K.P. Varma, Ganesh Prasad Jaiswal, Devi Prasad Sharma and N.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, J.—Shrimati Hasiba Khatoon, respondent 5, purchased the land bearing plot 994 measuring 0.12 acre appertaining to kihata 16, tauzi 1967, in village Ekil Dhonrha in the district of Gava, with, a house standing thereon for Rs. 800/- from Mst. Bibi Kaniz Fatma. respondent 6, and Mst. Bibi Uzra Khatoon, respondent 7, The purchase was by a sale deed executed on 16-8-1965 which, as mentioned in the order of the Board of Revenue, seems to have been, registered completely in a few days. Shri Mohammad Yusuf. the sole petitioner In this writ application, filed an application on 27-9-1965 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962), hereinafter called the Act, for pre-emption claiming to be an adjacent raiyat of the land comprised in plot 996 which, according to him, was to the west of plot 994. The petitioner's land comprised in plot 996 also is a homestead piece of land over which stands the house of the petitioner.

2. By order dated 25-7-1966 (Annexure 1) the Sub-divisional Officer. Jehanabad. respondent 3, dismissed the application filed by the petitioner u/s 16 (3) of the

Act. His findings are (i) that Plots 996 and 994 of khata 16 are ghair mazarua malik land, (ii) that Shri Yusuf is not the co-sharer of the plot in dispute nor of plot 994 and (iii) that the petitioner is not a raiyat or a co-sharer of the adjoining land of the disputed land.

3. The petitioner went up in appeal. The Additional Collector, by his order dated 27-12-1967 (Annexure 2) dismissed the appeal. He did not bother to go into the question whether the land transferred or the land belonging to the petitioner was culturable or used for non-agricultural purposes. He however, defeated the petitioner on the ground that he has failed to prove that he was a raiyat of an adjoining piece of land because on the western boundary in the impugned sale deed is shown the name of one Sharfuddin and therefore, the petitioner having not been shown on the western boundary, could not claim to be a raiyat of an adjoining piece of land.

4. The matter was taken by the petitioner in revision before the Com-missioner, Patna Division. The revision was dismissed by the Additional Commissioner by order dated 21-2-1970 (Annexure 3). He also did not go into the character of the land as to whether the land transferred was a piece of land which could be subjected to the provisions of Section 16 (3) of the Act. He defeated the petitioner on file ground that he had failed to prove that his plot 996 was adjacent to the plot transferred, namely, 994. A review application was filed before him which, was dismissed by the learned Additional Commissioner by his order dated 11-3-1970 (Annexure 3/a). Then the petitioner went to the Board of Revenue. The learned Additional Member, Board of Revenue, by his order dated 17-10-1970 (Annexure 4) has dismissed the revision application of the petitioner on two grounds-- (i) that the homestead piece of land transferred or owned by the petitioner was not for the purpose of agricultural operations and, therefore, it was not a land of the landholder within the definition of Clauses (f) and (g) of Section 2 of the Act and (ii) that the report of the Anchal Adhikari showed that a gali intervened between plots 994 and 996 and, therefore, the former was not an adjacent plot to the latter.

5. After examining the various facts and the materials of the case including the report of the Anchal Adhikari, it appears to me that the view of all the authorities below that plot 993 is not an adjacent piece of land to plot 994 is not correct; it seems to be adjacent. But that is not sufficient to enable the petitioner to win in this case. The main finding recorded by the learned Additional Member, Board of Revenue, which has rightly been recorded is that neither plot 994 nor plot 996 is a land within the meaning of Clause (f) of Section 2 of the Act. In my opinion, that finding seems to be beyond challenge. Clause (f) of Section 2 reads as follows:--

" "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, kharhar or pasturage or the homestead of a land-holder;

Explanation.-- "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 outbuilding and includes any outbuilding for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house."

The relevant portion of Clause (g) of Section 2 reads-

" "land-holder" means a person who holds land as a raiyat or as an under-raiyat and includes a mortgagee of land with possession".

It would thus be seen that the definition of "land" given in Clause (f) includes the homestead but not all kinds of homestead; it includes the homestead of a "land-holder only. The land-holder must be a person who holds land as a raiyat or as an under-raiyat. He cannot hold a land as a raiyat or as an under-raiyat unless the homestead held by him is held for agricultural purposes. The terms "raiyat" and "under-raiyat" are well defined terms understood under the Tenancy Law. A tenant under the Transfer of Property Act can never be a raiyat or an under-raiyat as the said terms mean. It has not been shown by the petitioner nor is it his claim even in this writ application that plot 994 was a homestead piece of land of which respondents 6 and 7 were raiyat or under-raiyat before their transfer or respondent 5 was a raiyat or an under-raivat after the transfer. Nor, could he show and claim that he was a raivat or an under-raiyat of plot 996 within the meaning of the definitions given in Clauses (f) and (g) of Section 2 of the Act.

6. Section 16 (3) of the Act reads as follows---

"(3) (1) when any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raivat 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 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:"

The provision of law quoted above can be pressed into service only if the land transferred is the land defined in the Act -- otherwise not. I have stated above that the land transferred was not nor is the homestead land of any land-holder. That being so no pre-emption can be claimed in respect of such a land. It is also important to note that when the petitioner claimed to be a raiyat holding land adjoining the land transferred, it was incumbent upon him to establish that he was a raivat of plot 996 being a homestead piece of land for agricultural operations. Neither such a claim was made nor was any evidence adduced. On the face of the nature of the land transferred and the nature of the land held by the petitioner, it is clear that they were not the raiyati lands of either kind. The view expressed above seems to be directly covered by a Bench decision of this Court in Kamlakant Goswami V. Balgobind Sah, 1971 BLJR 974.

7. For the reasons stated above, this writ application fails and is dismissed but in the circumstances there would be no order as to cost.

Akbar Husain, J.

8. I agree.