
(1995) 04 PAT CK 0048

In the Patna High Court

Case No : C.W.J.C. Nos. 8692 and 8693 of 1994

Mohammad Shafique Ahmed

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0048

Final Decision : Dismissed

Judgement

Aftab Alam, J.—These applications arise out of a proceeding for pre-emption in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

2. The Petitioner is the purchaser. He has lost to the claim raised by Respondent No. 6 before all the three Courts under the Act.

3. The Petitioner purchased 1 hatha of land from Survey Plot No. 3891 appertaining to Khata No. 4 situated in village Bahraul for a consideration of Rs. 9,500/- from Respondent No. 6 under sale deed No. 1363 executed on 18.3.1992. On the same date, from the same vendor, and for the same consideration he purchased Anr. area of 1 katha from the same plot under sale deed No. 1364. In other words, a purchase of 2 kathas of land from Plot No. 3891 was split up into two, though the two sale deeds were executed on the same date and were also registered on the same date 16.7.1992. It is not in dispute that the pre-emptor Respondent No. 5 was an adjoining raiyat to the vended pieces of land and was also shown on the northern boundry of the vended land in both the sale deeds in question.

4. He raised a claim of pre-emption in respect of both the vended pieces of land by filing two separate pre-emption applications. The Courts below have rightly held that the Petitioner-purchaser could hardly thwart the claim of pre-emption by the device of having got two sale deeds executed on the same date. It was rightly pointed out that the pieces of land under transfer were from the same

plot and the claim for pre-emption was raised by the same person who was shown on the northern boundry of the two transferred pieces of land. He also took care to file two separate applications in respect of each of the two sale deeds. The authorities under the Act are, therefore justified in holding that the Petitioner could not resist the claim for pre-emption on that score.

5. Mr. A.B. Mathur learned Counsel for the Petitioner, however, submitted that the claim of pre-emption raised by Respondent No. 5 was fit to be rejected for non-compliance with the provisions of Rule 19(3) of the Bihar Land Ceiling Rules, 1963. Rule 19(3) obliges the pre-emptor to send a copy of the pre-emption application to the transferor and transferee simultaneously with his filing the application before the authority. This rule is in the following terms:

Rule 19 (3): A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgement due.

Mr. Mathur contended that the aforequoted provision was quite mandatory and failure to comply with the rule would vitiate the entire proceeding. In support of the contention, he placed reliance on a Single Judge decision in the case of Ram Chandra Singh and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, He particularly placed reliance on paragraphs 13 and 14 of the (sic) this judgment.

6. Having considered the submissions and having perused the judgment cited (sic) am unable to accept Mr. Mathur's submission. I find that the judgment relied upon by him is of hardly any help to him. What actually held in that judgment was that it was mandatory to implead the transferor (sic) an opposite party in the pre-emptions proceeding and in that regard Sub-rules (3) and (4) of Rule 19 were taken note of. That judgment does not lay down that omission to comply with the provision of Rule 19(3) would prove fatal to a claim for pre-emption.

7. In this case it is not denied that the Petitioner and his transferor were given notices, were allowed to file show cause and were fully heard in support of their case. Now having lost before all the Courts under the Act, the Petitioner can hardly (sic) heard to say that the claim of pre-emption must fail for failure to comply with Rule (sic)(3) of the Rules.

8. I feel supported in this view on the basis of the Supreme Court decision in the case of Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., where some other similar provisions of the rule was held to be directory and not mandatory.

9. For the reasons stated above. I find to merit in these applications and they are accordingly dismissed.