

(2013) 09 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10171 of 1992

Mosafir Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 52

Citation : (2013) 09 PAT CK 0023

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Pushkar Narian Shahi with Mr. Karunesh Kumar Thakur and Mr. Gaurav Kumar Mishra, for the Appellant; Sudhir Kumar, AC to AAG-2 for the Respondent No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J.—Heard learned Senior Counsel appearing on behalf of the petitioners and the learned AC to AAG-2 appearing on behalf of the respondent No. 1 to 4. None is appearing on behalf of the respondent No. 5 to 11 even today, though the name of their learned counsel is printed in the daily cause list. In fact, this matter was taken up for hearing on 20th September 2013 itself, but none appeared on behalf of the private respondents on that date. Therefore, the matter was passed over for the day on that date with a stipulation that on the next appointed day, if none appears on behalf of the private respondents, the Court will have no option, but to decide the matter on the basis of materials available on record. Unfortunately, despite aforesaid order dated 20th September 2013, none is appearing on behalf of the contesting respondents even today. The petitioners have approached this Court under Articles 226 and 227 of the Constitution of India assailing the validity and correctness of the impugned Resolution dated 27.07.1992 (Annexure-3) passed in Case No. 350 of

1990 by the respondent Additional Member, Board of Revenue, Bihar, Patna, whereby the aforesaid revision application preferred on behalf of the petitioners u/s 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Act") has been dismissed and the order passed by the appellate authority has been affirmed. The petitioners have also questioned the validity and correctness of the impugned appellate order dated 11.04.1990 (Annexure-2) passed in Land Ceiling Appeal Case No. 42 of 1988 by the respondent Additional Collector, Saran, whereby the appeal preferred by the respondent No. 7 was allowed and the order dated 10.10.1988 (Annexure-1) passed in Land Ceiling Case No. 77 of 1981-82 by the respondent D.C.L.R., Chapra allowing the claim of pre-emption raised by the predecessor of the petitioners u/s 16(3) of the Act has been set aside and reversed.

2. In order to decide the issues raised in the present proceeding, brief facts are required to be noticed. The respondent No. 8 to 11 transferred 12 katha 2 dhoors of lands of plot No. 249 appertaining to khata No. 49 situate at village Kishunpura in favour of the respondent No. 5 and 6, namely, Pancham Rai and Jainath Rai respectively through a sale deed executed on 22.12.1981, which was duly registered on 22.01.1982. One Suraj Rai, predecessor of the writ petitioners, claiming to be the owner of plot No. 251 and 252 situate in western and southern side of vended plot No. 249 raised his claim of pre-emption with respect to vended plot u/s 16(3) of the Act before the respondent D.C.L.R., Chapra, which gave rise to Land Ceiling Case No. 77 of 1981-82. The pre-emption case by the aforesaid Suraj Rai was filed on 07.02.1982. In view of filing of aforesaid pre-emption case, a sale dated 08.02.1982 was executed by respondent No. 5 Pancham Rai alone in favour of one Bhulawan Rai, father of respondent No. 7 transferring entire area of 12 katha 2 dhoors of land of aforesaid plot No. 249, which was jointly purchased by respondent No. 5 and 6 by earlier registered sale deed dated 22.01.1982.

3. After hearing the parties and on consideration of the materials available on record, the respondent D.C.L.R. by his earlier order dated 23.05.1983 rejected the claim of pre-emption filed on behalf of the aforesaid Suraj Rai, the predecessor of the petitioners. However, on appeal being preferred by him, the matter was remitted back by the respondent Additional Collector, Saran at Chapra by his order dated 31.05.1984 with a direction to the respondent D.C.L.R. to consider the matter afresh. In view of the aforesaid remand order, the matter was considered afresh by the respondent D.C.L.R., Chapra and he by his order dated 10.10.1988 (Annexure-1) allowed the claim of pre-emption raised on behalf of the aforesaid Suraj Rai, predecessor of the petitioners, and vendees were directed to re-convey him the transferred land on the same terms and conditions, which were stipulated in the impugned sale deed. However, the appellate authority has reversed the aforesaid order passed by the original authority, which has been approved by the revisional authority. Hence, the present writ petition at the behest of the heirs and legal representatives of the original pre-emptor Suraj Rai, who is now dead.

4. Learned Senior counsel appearing on behalf of the petitioners has submitted that original purchase of the plot in question was made by the respondent No. 5 and 6 through a registered deed of sale dated 22.01.1982. Therefore, respondent No. 5 alone could not have transferred the entire area of 12 katha 2 dhoors of land in favour of Bhulawan Rai, father of respondent No. 7. He next contended that subsequent transfer by respondent No. 5 in favour of aforesaid Bhulawan Rai by sale deed dated 08.02.1982 was hit by the doctrine of lis pendens as the predecessor of the petitioners had already filed his pre-emption case on 07.02.1982. According to the learned Senior counsel, the subsequent transfer on 08.02.1982 was only with a view to defeat the claim of pre-emption raised on behalf of the predecessor of the petitioners, as admittedly the respondent No. 5 and 6 were not having any other land in the boundary of the vended plot No. 249, therefore, they could not have resisted the claim of pre-emption raised by aforesaid Suraj Rai, being the boundary raiyat from southern and western side. It was lastly submitted that the order dated 10.10.1988 (Annexure-1) passed by the respondent D.C.L.R., Chapra was basically against the respondent No. 5 and 6, as they were directed to re-convey the vended land, but they chose not to file any appeal and thereby they accepted the finality of the order passed by the respondent D.C.L.R. However, the respondent No. 7, being the heir of subsequent transferee-Bhulawan Rai, filed appeal in terms of Section 30 of the Act giving rise to L.C. Appeal Case No. 42 of 1988, which was allowed by the impugned appellate order dated 11.04.1990 (Annexure-2), though she had not acquired legal right with respect to entire vended plot No. 249, as the subsequent transfer was made by respondent No. 5 alone, therefore, the appeal at her behest was not maintainable. It was also urged that respondent Additional Member, Board of Revenue, without considering the points raised on behalf of the petitioners has arbitrarily rejected the revision application filed on their behalf by his impugned Resolution dated 27.07.1992 (Annexure-3).

5. As noticed above, none has appeared on behalf of the contesting respondents. Even counter affidavit has not been filed on their behalf. However, Mr. Sudhir Kumar, learned A.C. to AAG-2 appearing on behalf of the official respondents, has supported the impugned orders.

6. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the appellate order dated 11.04.1990 (Annexure-2) and the revisional order dated 27.07.1992 (Annexure-3) cannot be sustained in the law. Admittedly, predecessor of the petitioners had filed a pre-emption case on 07.02.1982, and thereafter respondent No. 5 alone transferred the entire area of land in favour of father of respondent No. 7, though originally the lands under dispute was purchased jointly by the respondent No. 5 and 6. Therefore, the father of the respondent No. 7 did not acquire his right and title with respect to the entire area of the vended plot. Admittedly, the respondent No. 5 and 6 did not challenge the order passed by the original authority allowing the claim of preemption in favour of the predecessor of the petitioners. The respondent No. 5 and 6 did not claim their ownership of any other plots adjacent

to the vended plot No. 249. Even if the right and title of the petitioners with respect to plot No. 252 situate in south of the vended plot is not accepted, but in view of the fact that there is no dispute of right and title of the petitioners with respect to plot No. 251 situate in the western side of the vended plot, they are entitled to be held to be the adjacent raiyat of the vended plot No. 249. Hence, their claim of pre-emption was rightly allowed by the respondent D.C.L.R., Chapra.

7. Learned Senior counsel has rightly placed reliance on a judgment of this Court in the case of Ram Roop Yadav Vs. The Additional Member, Board of Revenue and Others, , as the subsequent transfer made by the respondent No. 5 in favour of the father of respondent No. 7 was hit by the doctrine of lis pendens as provided u/s 52 of the Transfer of Property Act. Unfortunately, all these aspects have not been taken into consideration either by the appellate authority or by the revisional authority while passing their impugned orders as contained in Annexure-2 and 3 respectively.

8. For the reasons recorded above, the impugned order dated 11.04.1990 (Annexure-2) passed in Land Ceiling Appeal Case No. 42 of 1988 by the respondent Additional Collector, Saran as also the impugned Resolution dated 27.07.1992 (Annexure-3) passed in Case No. 350 of 1990 by the respondent Additional Member, Board of Revenue, Bihar, Patna are hereby set aside and the order dated 10.10.1988 (Annexure-1) passed in Land Ceiling Case No. 77 of 1981-82 by the respondent D.C.L.R., Chapra is hereby restored. In the result, the writ petition stands allowed, but without costs.