

(2007) 03 PAT CK 0181

In the Patna High Court

Case No : CWJC No's. 7843 and 7927 of 1988

Mosstt. Chameli Devi and Others

APPELLANT

Vs

The Additional Member, Board of Revenue, Bihar and Others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16, 16(3)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34
Constitution of India, 1950 — Article 226, 227, 39(b)

Citation : (2007) PLJR 109

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : Surya Bhushan Prasad Singh, for the Appellant; S.R.C. Pandey For the Respondents and Mr. Om Prakash Upadhyaya for the State, for the Respondent

Final Decision : Dismissed

Judgement

Dr. J.N. Bhatt. C.J.

1. Since both these writ applications under Articles 226 and 227 of the Constitution of India, involve common questions of law, though divergent facts to be highlighted hereinafter, upon consensus, they have been heard together, and are being disposed of by this common judgment. While in CWJC No. 7843 of 1988, challenge has been made against the order of the appellate revenue authority i.e. the Additional Collector (Respondent No. 2), passed in Ceiling Appeal No.14 of 1984 (Annexure 3), dated 2.6.1986, confirmed by the Additional Member, Board of Revenue, dated 29.3.1988, in Revision Case No. 456 of 1986, in CWJC No. 7927 of 1988, the original petitioner, since dead, had challenged the order of all the three revenue authorities, viz. Land Reforms Deputy Collector (LRDC), Additional Collector, as well as, Additional Member, Board of Revenue, respectively, dated 17.11.1983, 2.6.1986, and 29.3.1988. passed in Land Ceiling Case No. 8 of 1983-84, giving rise to Appeal No. 41 of 1983-84 and Revision

Case No. 455 of 1986, whereby the pre-emption application of the respondent No. 4 came to be allowed by the LRDC which was confirmed by the appellate authority, as well as. revisional authority.

2. In both the cases, the land in dispute relates to Tauzi No. 418C, Khata No. 375, Plot No. 689 having an area of 10 dhurs in CWJC No. 7843 of 1988 and an area of 1 katha and 2-1/2 dhurs in CWJC No. 7927 of 1988 having total area of 1 katha and 12-1/2 dhurs of land of village Gonawan, Police Station Harnaut, District Nalanda. The petitioners are the purchasers of the aforesaid land from respondent No. 5, Bhuneshwar Prasad Singh After the purchase of the aforesaid land by the petitioners, respondent No. 4 Balmiki Ram filed two applications u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 ("The Act of 1961") for pre-emption claiming to be adjoining raiyat, as well as, co-sharer of the land in dispute. Two cases were instituted before the LRDC being Land Ceiling Case Nos. 12 and 8 of 1983-84, respectively.

3. Upon consideration of the facts and circumstances, the LRDC while allowed the pre-emption application in Land Ceiling Case No. 8 of 1983-84, he rejected another case being Land Ceiling Case No. 12 of 1983-84. The matter was thereafter carried to the appellate authority and then in revision and the matter was decided, as indicated above.

4. Section 16(3) of the Act of 1961, in Chapter V, which deals with restriction on future acquisition, is very important. It gives the right of pre-emption and, thus, it is useful to quote the provisions of this Section as hereunder:--

"16. Restriction on future acquisition by transfer etc.--(1) No person shall, after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, altered, held by him exceeds in the aggregate of the ceiling area.

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(3) (i) When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a raiyat 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 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:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause (i).

(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 within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be followed."

5. Thus, Section 16 of the Act of 1961 contained in Chapter V prescribes provisions for restriction on future acquisition by transfer etc. It could very well be visualized from the aforesaid provisions that clause (i) of Section 16(3) of the Act of 1961 stipulates that on happening of any transfer of land made after the commencement of the Act of 1961 to any transferee, other than co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, is competent and entitled, within three months of the date of the registration of the document of the transfer, to make an application before the Collector in prescribed manner for the transfer of the land to him on the terms and conditions in the said deed. Other pre-requisites are provided in the two provisos.

6. The Act of 1961 has a laudable object. The Act is a piece of social legislation for agrarian reforms. The design and desideratum of the legislation is to break up the concentration of ownership of control of material resources of the community and to so distribute the land as best to subserve the common good as enshrined under Article 39(b) of the Constitution of India.

7. Let it be also mentioned that having regard to the scope of agriculture available in the State of Bihar, once upon a time it had one of the highest per capita density in the whole of the country before bifurcation. It is in these contexts, the ceiling law appears to be reasonable and fair. One of the objects has been to make the provision for equitable distribution of natural resources and, therefore, it was thought, expedient, to enact such provision of making surplus land available for the distribution to landless peasantry. There is one view that such an Act is a commendable effort to make available land to the members of the family and persons living below the poverty line to ameliorate the poverty of the landless agriculturists.

8. It could also very well be appreciated from the entire purpose of the said legislation that the ceiling on agricultural holdings once fixed cannot be allowed to remain static and unalterable for all times to come. It is in these context as could be seen from the legislative history that the provisions have been made to make suitable changes in view of the changing social needs and circumstances.

9. There is also definite and specific philosophy of the "doctrine of PREEMPTION". No doubt at times it has been held to be a very weak right. A person who claims right of pre-emption has to successfully answer the eligibility criteria prescribed in Section 16(3) of the Act of 1961 within three months of the date of registration of the document and the transfer.

10. Coming to the main issue, in the instant case, after having considered the rival submissions, as well as, relevant factual profile and the text and tenor of the three impugned orders of the revenue authorities under the Act of 1961, this Court is of the opinion that though, ordinarily, Writ Court will be at loath to interfere with the orders or decisions of the authorities below, here is a group of two writ petitions, which requires special consideration as the revisional authority, while affirming the order of the appellate authority which granted right of pre-emption to respondent No. 4, has done it by a cryptic order. The manner and mode in which the revisional order is passed, on being questioned, would be vulnerable as there were two divergent decisions of the two revenue authorities i.e. the LRDC or the Additional Collector. Obviously, therefore, it is required while affirming the order of the appellate authority and not accepting the order of the first revenue authority to give reasons. There are no specific or unambiguous reason in support of the conclusion. This Court is satisfied that the right of pre-emption claimed by respondent No. 4 in both the writ petitions in respect of the disputed land was rejected which was reversed by the appellate authority and confirmed in revision in both the matters. It is in these contexts, it becomes necessary for the revisional court, while exercising quasi judicial powers, to give reasons in respect of the conclusion arrived which, on being questioned further, the higher forum is required to consider whether they are justified or not. Any order which is cryptic and passed in a cavalier manner cannot be sustained. So is the position in this group of two writ petitions under Articles 226 and 227 of the Constitution of India. Therefore, this Court is left with no alternative but to allow these writ petitions and remand the matter to the revisional authority to consider the matter afresh in accordance with law and pass a reasoned and speaking order in respect of any conclusion that may be reached in the light of the case and law, expeditiously. Since the matter is very old, the revisional authority shall consider and decide the matter within a period of six months from the date of receipt of the writ of this Court. In case of any difficulty, it will be open to move this Court, appropriately, for necessary order that may be required. With the above observations, both the writ applications shall stand allowed while quashing and setting aside the aforesaid order of the revisional authority. No cost. Rule is made absolute.