(1984) 03 PAT CK 0016

In the Patna High Court

Case No : Letters Patent Appeal No. 23 of 1980

Moti Mandal and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 03-03-1984

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)(1)

Citation : AIR 1984 Patna 352 : (1984) PLJR 918

Hon'ble Judges : S. Sarwar Ali, J;B.P. Jha, J

Bench : Division Bench

Advocate : S.B.N. Singh and K.K. Mandal, for the Appellant; Birendra Mohan Singh, Rameshwar Prasad, Govt. Pleader No. 4 and Upendra Prasad, Jr. Counsel to Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—This appeal arises out of the judgment dated 10-1-1980 of the learned single Judge in C.W.J.C. No. 1954 of 1976.

2. This matter arises out of a preemption case. Moti Mandal and others filed an application for pre-emption on 16-9-1968. The impugned sale deed was executed by Mahabir Mandal in favour of Rameshwar Singh and Jagdish Singh on 8-8-1967 and it was registered on 4-7-1968. The application for pre-emption was filed within three months from the date of registration. The learned single Judge was of the view that the pre-emption application should be rejected on two grounds, namely, (1) that the pre-emption application itself is not maintainable, and (2) that the purchase money and the holding cannot be split up in a pre-emption case.

3. So far as point No. 1 is concerned, the learned single Judge was of opinion that this purchase money ought to have been deposited along with the application. In the present case these petitioners had filed an application for pre-emption before the date of the registration along with the purchase money with a

sum equal to 10% thereof. These petitioners filed another application within three months from the date of the registration and attached the earlier challan, by which the purchase money together with the sum equal to 10% thereof was deposited earlier. The learned single Judge was of the view that fresh purchase money ought to have been deposited along with the subsequent application within three months of date of the registration. I disagree with the opinion of the learned single Judge on this point.

4. Section 16 (3) (1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, (hereinafter referred to as the Act) provides that an application for pre emption shall be filed within three months from the date of the registration of the document of transfer. The proviso to Section 16 (3) (1) of the Act provides that no application shall be entertained by the Collector unless purchase money together with the sum equal to 10% thereof is deposited in the prescribed manner within the said period. The only limitation is that the application for pre-emption be filed within three months from the date of the registration and a challan in regard to the deposit of the purchase money and 10% of the purchase money be filed within three months.

5. In the present case both the requirements have been fulfilled. In the present case, the application for preemption has been filed within three months from the date of the registration and the challan, as required in proviso to Section 16 (3) (1) of the Act has also been filed along with the application. In my view there is no infirmity in following the Proviso to Section 16 (3) (1) of the Act. So far as this portion of the judgment is concerned, it is not upheld by this Bench.

6. The second point for consideration is, whether the purchase money, as required by Proviso to Section 16 (3) (1) of the Act, and the holding can be split up or not. In this connection, learned counsel for the appellants has cited a decision of the learned third single Judge of this Court in Basudeo Choudhary Vs. State of Bihar and Others, . There was difference of opinion in Letters Patent Appeal No. 1 of 1980; and as such it was referred to the learned third Judge, namely, the Hon''ble Mr. Justice Lalit Mohan Sharma. The learned third Judge was of opinion that this decision will apply to a case where two applications for pre emption have been filed within the period of limitation. In other words, he means to say that the decision will not apply to any other case, except where two pre-emption applications have been filed u/s 16 (3) of the Act in accordance with law. It is necessary to quote the decision of the Hor''ble third Judge which is as follows-

"I hold that when two applications u/s 16 (3) are filed within the period of limitation, the applicants are entitled to equal shares in the disputed land and each of them shall be liable to pay half the amount as directed by the section".

In other words, this decision has not overruled the decision of the Division Bench of this Court in Ramchabila Singh v. Ramsagar Singh, 1968 Pat LJR 279. In this case the Division Bench has held that-

"............. The "purchase money" also is intended to be one unit......... It is now well settled that the amount of consideration money in a sale-deed is a term of the document........... Thus, the Legislature did not authorise the Collector to split up the document........... Thus, the Legislature did not authorise the Collector to split up the total consideration money and allow a right of pre-emption to the applicant on payment of a portion of the same in respect of some portion of the land transferred........."

7. In the present case, Moti Mandal (the petitioner) and Jagdish Singh (the purchaser) entered into a compromise. I have also been informed by learned counsel for the respondents that in pursuance of the compromise a sale deed has also been executed. The term of the compromise was that half of the purchase money already deposited will go to Jagdish Singh and half of 10% will also go to Moti Mandal. It is, therefore, clear that by the compromise the purchase money was split up as well as the 10% which was deposited, was also split up. If this is so, there cannot be a partial pre-emption, as has been held by the Division Bench in Ramchabila Singh''s case (Supra). The only exception is that if two applications are filed for preemption in accordance with law, then an apportionment can be directed in respect of the purchase money as well as in respect of the holding, otherwise not.

8. In this view of the matter, the decision of the learned single Judge is upheld to the extent that the purchase-money and the holding cannot be split up when there is only one application for preemption.

9. In the result, the application is dismissed but without any cost.

S. Sarwarali, J.

10. I agree.

