
(2011) 05 PAT CK 0107
In the Patna High Court
Case No : CWJC No. 3000 of 2006

Mst. Jagwa Devi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

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

Citation : (2011) 3 PLJR 786

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Petitioners herein are the purchasers of small tract of land which became subject matter of claim u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (for short "the Act") by Respondent nos. 6 to 8, who claimed themselves adjoining raiyat(s) of the vended land/ plot(s). Impugned in the present writ petition is the resolution dated 20.1.2006 (Annexure-4) passed by the Respondent Board of Revenue, Bihar in case No. 221 of 2005, whereby the revision application preferred by the Petitioners was rejected.

2. Background facts in a nutshell are as under:-

6 dhurs of land appertaining to khata No. 260, khesra No. 1105 situated in Mouza-Mohanpur in the District of Samastipur was vended by a deed of sale (Annexure-1) by Respondent nos. 9 to 11 in favour of the writ Petitioners. A preferential claim as engrafted u/s 16(3) of the Act was filed by the preemptors/ Respondent nos. 6 to 8 giving rise to L.C. Case No. 1 of 2004-05. On notice, the purchasers appeared and resisted the claim of preemption, inter alia, on the ground that the very small tract of land purchased by them was for residential purposes and the same has changed its colour/use/nature and as such right of pre-emption would not survive against the vended land/plot. On a consideration

of the materials on record, the Respondent D.C.L.R., by a proceeding dated 22.9.2004 (Annexure-2), dismissed the application of preemptors/Respondent nos. 6 to 8 concluding therein that a very small tract of land was purchased by the writ Petitioners for construction of his residential house and the same was not capable of being used for agriculture in any manner. The land was close to a road constructed by the Public Works Department, Government of Bihar. Aggrieved by the aforesaid order, the preemptors/Respondent nos. 6 to 8 preferred appeal vide L.C. Appeal No. 122 of 2004-05. Respondent appellate Court/authority by a proceeding dated 10.8.2005 (Annexure-3) allowed the appeal holding therein that from the recitals made in the sale deed it was apparent that both the vendors and vendees were agriculturists and the vended land was described as Bheet-1 and, therefore, the same was amenable to the provision contained u/s 16(3) of the Act. Dissatisfied with the aforesaid order the writ Petitioners preferred revision which was considered and rejected by resolution dated 20.1.2006 (Annexure-4) passaging filing of present writ petition.

3. Heard learned counsel for Petitioners, Respondent nos. 6 to 8 (preemptors) as well as the State.

4. While assailing the revisional as well as the appellate order, learned counsel for the Petitioners submits that in the subject sale deed (Annexure-1), the preemptors have not been reflected as adjoining raiyat(s). A very small tract of land (less than half katha) was purchased by the writ Petitioners, it has been specifically recited therein that such purchase was being made for construction of residential house of the purchasers. The boundary set out in the subject sale deed would show that on the Western side of "the vended plot there is a public road/rasta. D.C.L.R., in view of the claim/counter claim of the parties, made local inspection of the plot in question and found that several residential premises have come up on or around the vended land which was close to a road constructed by the Public Works Department of Government of Bihar. It is, thus, submitted that the vended land would not be amenable to pre-emption proceeding. Reliance in this regard has been placed on a Division Bench judgment of this Court rendered in the case of Vidya Prasad Singh v. The State of Bihar & Ors. since reported in 2010 (2) PUR 17 as also on 2010 (4) PUR 104 (Mahabeer Singh & Ors. v. The State of Bihar & Ors.).

5 Per contra, learned counsel for the preemptors/Respondent nos. 6 to 8, drawing attention of the Court to recitals made in the subject sale deed (Annexure-1) submitted that the vendors and the vendees have been shown as agriculturists. The vended land has been described as Bheet-1. The authority has to go by the nature of land as it stood on the date of lodgment of the proceeding. It is submitted that writ Petitioners intentionally did not indicate names of the preemptors (being son of late Ramdeo Rai) on the Southern as well as Western boundary of the vended plot. It is submitted that the father of the preemptors/Petitioners had already purchased land from Ram Babu Sah several years prior to the present transaction and as such his sons (preemptors) ought to have been

shown as adjoining raiyat on those two sides of the vended plot. It is . submitted that this factum has been considered and found correct by the Courts below. Learned counsel has vehemently disputed the local inspection which is said to have been carried out by the first authority and thus criticized that part of the order of Respondent D.C.L.R. It is submitted that there is no memo of local inspection on record and further there is nothing on record to indicate that prior notice was issued to and served upon the contesting parties including the preemptors/Respondent nos. 6 to 8.

6. I have considered the submissions advanced on behalf of the parties and perused the materials on record. The issue which requires answer in the present writ proceeding is whether in face of materials on record including the subject sale deed (Annexure-1), the small tract of land vended in favour of the purchasers/writ Petitioners would be amenable to the proceeding u/s 16(3) of the Act. From the submissions of the parties and the materials on record, the following facts are not in dispute:-

(i) A very small tract of land (six dhurs) was vended in favour of the writ Petitioners.

(ii) There is clear recital in the sale deed that the vendees had purchased the land for the construction of their residential house/premises.

(iii) There is a public road on the Northern side of the vended plot.

7. On a perusal of the revisional order (Annexure-4), it appears that following submissions was advanced on behalf of the preemptors/Respondent nos. 6 to 8:-

It is also submitted that the total area of plot is 8 kathas out of which two kathas were acquired for road and five kathas were purchased by the ancestor of Bidhan Chand Roy in a portion of which, in course of time house was erected and the remaining area is under cultivation. The level of the road were raised in course of time with the result that in rainy season only water accumulate in the land and after the rain water recedes the lands become fit for agricultural operation.

8. While considering point No. 2 whether the subject matter of dispute comes within the definition of land, the revisional Court found as under:-

The D.C.L.R. found bamboo clumps to the east of the disputed land and further east of the bamboo clumps is the land which is the back portion of a shop. This indicates that the land has been agricultural and in course of time some construction has been made in the hereby area for residential purposes and also for shop purposes. Thereby it can not be said that the disputed land does not remain agricultural. The purpose of getting some construction in future, as is mentioned in the deed cannot be treated to have changed the nature of the land from agricultural to homestead.

9. A Division Bench of this Court had an occasion to consider the facts akin to the present case. It has been held therein, at Para 7, that:-

7. In our view, the real issue is not whether there is actually a house over the land but the intention of the purchaser as available from the sale deed. The sale deed shows that the land though recorded as agricultural and in the survey records, has been described in the sale deed as a land meant for construction of house. The wordings are in local language and the meaning has been given correctly by the appellate authority which has also recorded its finding after local inspection that the land is suitable for constructing homestead. While allowing the writ petition by judgment and order dated 15.5.2007, the writ court was impressed by such intention expressed at the time of purchase itself in the sale deed and thereafter reliance was placed upon the judgment of this Court in the case of *Urmila Devi v. The State of Bihar & Ors.*, 1998 (1) PUR 758 for holding that when the land in question is not agricultural land and is held for residential purposes, as stated in the registered sale deed, the provisions of Section 16(3) of the Ceiling Act relating to preemption will not be applicable.

10. If a very small area is vended and it can be seen from the sale deed itself that the same is closer and/or adjoining to a road, Courts have viewed such sale with due care. A learned Single Judge of this court in the case of *Mahabeer Singh* (supra) observed as under in Para 14 of the report:-

14. As mentioned above the Petitioners of the seven writ petitions have purchased only 10 dhurs of land from the larger plot. This Court, apart from the facts stated aforesaid, finds that their sale deed cannot be set aside on the ground, as they have purchased a very small piece of land and, therefore, no pre-emption application would lie for such a small piece of land.

11. From the materials on record and after considering the submissions of the parties and in view of admitted position appearing from the subject sale deed, this Court is satisfied that the ratio laid down in the *Vidya Prasad Singh* (supra) would be applicable in the present case. There is no material on record to show that the land vended under the subject sale deed was capable of being used in any manner for agriculture. On the contrary, there are materials on record to show that the same was purchased by the writ Petitioners/purchasers for construction of their residential house. The submission of the preemptors before the revisional Court is also indicative of the aforesaid fact.

12. For all these reasons, this Court allows the application. Accordingly order dated 20.1.2006 (Annexure-4) passed by Respondent Additional Member, Board of Revenue in Case No. 221 of 2005 as well as order dated 10.8.2005 (Annexure-3), passed by Respondent Additional Collector in L.C. Appeal No. 122 of 2004-05 are quashed and set aside.

13. There shall be no order as to costs.