(1989) 03 PAT CK 0035

In the Patna High Court

Case No : C.W.J.C. No. 3575 of 1982

Mst. Rajrani Asha Devi and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:

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

Citation : (1989) 37 BLJR 269 : (1989) PLJR 889

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 19-5-1982 passed by the respondent No. 3 as contained in Annexure 2 to the writ petition and an order dated 27-7-1982 passed by the respondent No. 2 and as contained in Annexure 3 to the writ petition whereby and where under the said respondents allowed an appeal from an order dated 26-3-1981 passed by the respondent No. 4 and as contained in Annexure 4 to the writ petition at the instance of the respondent Nos. 5 and 6 and the respondent No. 2 dismissed the revision application filed by the petitioners against the order dated 19-5-1982 respectively.

2. The facts of the case lie in a very narrow compass.

3. The petitioners by reason of a deed of sale dated 5-7-1980 purchased 29 decimals of land in plot No. 159 and 17 decimals of land in plot No. 360 from respondent No. 7.

4. The application for pre-emption purported to be in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was jointly filed by the respondent Nos. 5 and 6 claiming pre-emption in respect of the aforementioned lands purchased by the petitioners

5. From a perusal of the order passed by the respondent No. 4 and as contained in Annexure 1 to the writ petition it appears that respondent No. 5 claimed himself to be an adjoining raiyat in respect of plot No. 360 and respondent No. 6 claimed himself to be an adjoining raiyat of plot No. 159 The respondent No. 4 thus found that the application for preemption filed by the respondent Nos. 5 and 6 jointly was not maintainable.

6. On appeal, the respondent No. 3 purported to be acting on the basis of an averment made in the memo of appeal reversed the said findings of the respondent No. 4 allegedly on the ground that the respondent Nos. 5 and 6 belonged to the same family and they allegedly inherited plot No. 173 which was recorded in the name of their grandfather. "The Board of Revenue summarily dismissed the revision application filed by the petitioners.

7. Plainly enough the respondent Nos. 2 and 3 have committed an illegality in so far as they failed to take into consideration the statements made in the application by the respondent Nos. 5 and 6 in their application for pre-emption as evidenced from the order of the respondent No. 4 and as contained in Annexure 1 to the writ petition.

8. In my opinion, the respondent No. 4 had rightly rejected the application for pre-emption filed on behalf of the respondent Nos. 5 and 6 inter alia on the basis of a decision of this Court in Sukhram Singh Vs. The State of Bihar and Others, . In the said decision it has been held as follows:

If two or more persons make a joint claim for pre-emption each must be co-sharer or adjoining raiyat of all the vended plots. If separate claim by each is not maintainable two or more persons merely by joining hands cannot claim pre-emption.

9. As noticed hereinbefore neither the respondent No. 3 nor the respondent No. 2 have recorded any finding that the respondent Nos. 5 and6 are still co-sharers in respect of plot No. 173 and thus both of them jointly are raiyats of adjoining land in respect of both the plot Nos. 159 and 160respectively which have been purchased by the petitioners by reason of therefore mentioned deed of sale dated 5-7-1980.

10. In this view of the matter the impugned order cannot be sustained.

11. In the result this writ petition is allowed and the orders contained Annexure 2 and 3 are hereby quashed. Let a writ of certiorari be issued accordingly. However, on the facts and in the circumstances of the case there will be no order as to costs.

