
(1999) 02 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 7194 of 1991

Nabijan Mian and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3), 5
Limitation Act, 1963 — Section 29, 5

Citation : (1999) 2 PLJR 52

Hon'ble Judges : I.P. Singh, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : Y.V. Giri, Rajendra Kumar Giri and Raju Giri, for the Appellant; S.J. Rahman, V.B. Ambastha, Yogendra Mishra, Amresh Kr. and Birendra Tiwari, for the Respondent

Final Decision : Allowed

Judgement

B.N. Agrawal and I.P. Singh, JJ.—This application has been filed for quashing the order dated 5.8.1991 passed by the Deputy Collector, Land Reforms, contained in Annexure "2" whereby petition u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter: referred to as "the Act") has been allowed: and orders contained in Annexures 3 and 5 passed by the appellate authority and revisional authority respectively.

2. The short facts are that one Ghazi Mian, ancestor of Respondents 6 to 11 executed a sale deed on 3.3.1979 in favour of all the three Petitioners with respect to 11 Dhurs of land for a consideration of Rs. 500/-, registration of which was completed on 20.3.1979. Respondent No. 5, Abdul Jalal filed a petition u/s 16(3) of the Act on 8.5.1979 claiming preemption with respect to land covered by the aforesaid sale deed. In that application Petitioner No. 1 alone was impleaded as opposite party. So far Petitioners 2 and 3 are concerned, they were not impleaded as opposite party in the original application but for their addition

on 18.9.1979 a petition was filed on behalf of the pre-emptor. Upon the said application the original authority by its order dated 18.9.1979 added the aforesaid two persons as a party and thereafter notice was directed to be issued. Subsequently by order dated 4.7.1980 the said order impleading Petitioners 2 and 3 as party was confirmed and direction was given for issuing notice of the main pre-emption application to the aforesaid persons. So far Petitioners 2 and 3 are concerned, they had already appeared in the pre-emption proceeding but Petitioner No. 3 had never appeared there.

3. Ultimately by order dated 5.8.1981 the pre-emption application was finally disposed of whereby the prayer for preemption was granted. Being aggrieved by the said order the Petitioners preferred an appeal which has been dismissed on 14.9.1989 by the Additional Collector, Gopalganj contained in Annexure "3". Thereafter the Petitioners filed a revision application before the Board of Revenue and the same has been dismissed by the learned Member, Board of Revenue by his order dated 28.8.1991, contained in Annexure 5. Hence this application.

4. Learned Counsel for the Petitioners in support of this writ application has raised two points; firstly it has been submitted that the provisions of Section 5 of the Limitation Act has no application to a petition u/s 16(3) of the Act. Learned Counsel for the Respondents-pre-emptor on the other hand contended that the provisions of Section 5 of the Limitation Act does apply even in relation to a petition filed u/s 16(3) of the Act. In support of his contention learned Counsel for the Respondents has placed reliance on a decision in the case of Krishna Kumar Choudhary v. Alliance Industries Ltd. and Ors. 1991 (1) PLJR (S.C.) 3. In that case it was laid down that in view of the provisions of Section 29 of the Limitation Act Section 5 of the said Act was applicable in relation to a pre-emption application filed u/s 16(3) of the Act. We find that the point raised in this case is concluded by the aforesaid judgment of the Supreme Court in relation to pre-emption application. The original authority was directed to consider the petition for condonation of delay on merit and pass order thereupon in accordance with law. This being the position we do not find any substance in the first point raised on behalf of the Petitioners.

5. Learned Counsel for the Petitioners next contended that even if the provisions of Section 5 had application in relation to petition u/s 16(3) of the Act, it was incumbent upon the pre-emptor to file an application for condonation of delay along with the petition for addition of party and if such an application would have been filed, the original authority could have condoned the delay in impleading Petitioners 2 and 3 as party after giving opportunity of hearing to them. From the order sheet it appears that out of Petitioners 2 and 3 only Petitioner No. 2 had appeared before the original authority but so far Petitioner No. 3 is concerned, he had never appeared before it, therefore, it was incumbent upon the authority to notice this Petitioner. It has been stated in the writ application that at no point of time any notice was given to Petitioner No. 3 by the original authority. From the order sheet it appears that before passing the order dated 18.9.1979 for addition

of party no notice was at all given. The order sheet further shows that notice was directed to be issued on 15.1.1980 but there is no reference in the order sheet as to whether the same was served upon this Petitioner before 4.7.1980 on which date the order for addition of party was confirmed. The Petitioner specifically said that no notice was ever served upon this Petitioner. In the counter affidavit it has nowhere been stated that any notice was served upon Petitioner No. 3 either before adding him as party or even before confirming the order for addition of party which was passed on 4.7.1980. The only statement made in the counter affidavit is that the order for addition of this Petitioner was confirmed on 4.7.1980 thereafter notice was served upon him on 5.8.1980, as would appear from acknowledgement due, Annexure "A" to the counter affidavit. These facts show that never any notice was served upon Petitioner No. 3 either before adding him as a party or before confirming the said order. It is well settled that a person is required to be served with a notice of the petition filed like the present one. That apart, it appears that no formal petition u/s 5 of the Limitation Act was filed for condonation of delay in adding Petitioners 2 and 3 after expiry of the period of limitation in the original proceeding.

6. For all these reasons we are of the view that the order for addition of party, confirmatory order and final order passed in the original proceeding as well as the appellate and revisional order are fit to be quashed.

7. Accordingly, the writ application is allowed. Orders dated 18.9.1979, 4.7.1980 and 5.8.1981 passed by the original authority and those passed by the appellate and revisional authority, contained in Annexures 3 and 5 respectively are hereby quashed. The matter is remanded to the original authority. Upon remand the said authority is not required to give further notice to any of the Petitioners as learned Counsel appearing on their behalf stated that these Petitioners undertake to appear before the original authority within a period of six weeks from today. It will be open to the pre-emptor to file an application u/s 5 of the Limitation Act for condonation of delay in impleading Petitioners 2 and 3 as party in the original proceeding. It will be also open to the Petitioners to file rejoinder to the petition for addition of party already filed and petition u/s 5 of the Limitation Act if at all filed. It will be also open to the Petitioners 2 and 3, who have not filed show cause as yet, to file their show cause in the main proceeding. It is needless to say that in case the original authority comes to the conclusion after giving an opportunity of hearing to the parties that sufficient grounds have been made out for condonation of delay in impleading Petitioners 2 and 3 as opposite party in the original proceeding, then only it shall proceed to dispose of the pre-emption application on merit otherwise the same shall be liable to be rejected on the ground of limitation. In the circumstances of the case we direct that there shall be no order as to costs.