(2008) 08 PAT CK 0040

In the Patna High Court

Case No : CWJC No. 15148 of 2006

Nagendra Singh and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

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

Citation : (2009) 1 PLJR 28

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Nawal Kishore Prasad, for the Appellant; Udit Narayan Singh, Amit Kumar Singh for Respondent Nos. 5 and 6 and Mr. Rajnish Kant for the state, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Learned counsel for the Private Respondents is permitted to correct the plot numbers in the different paragraphs of his counter affidavit. Heard learned counsel for the petitioners and the respondents.

2. Petitioners are the purchasers of two Kathas of land in Plot No. 927 appertaining to Khata No. 60 vide a registered sale-deed dated 2.8.2001 which is contained in Annexure-2 to this application. Perusal of the said sale-deed indicates that they have purchased the lands in-question for Rs. 1,50,000/- for raising a house. Aforesaid sale-deed became subject-matter of a pre-emption case under sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") at the instance of Private Respondent Nos. 5 and 6. During the pendency of the preemption case the lands in-question was even inspected by the Collector under the Act who made out a memo of inspection, which is dated 5.7.2002 and has been referred to in extenso in the order passed by the authorities, perusal whereof indicates that the lands in-question is situate right

next to the Mairwa, Siwan State Highway and is 50 yards from a market place as also is surrounded by several houses on both sides of the State Highway and is also near to a school. The Collector under the Act having recorded the aforesaid finding that the lands in-question is located near a market place and is surrounded by houses as also is near to a school allowed the pre-emption case under orders dated 9.7.2002 passed in L.C. Case No. 60 of 2001-2002, Annexure-3 after recording further finding that on the date of inspection of the lands in-question maize crop was found sown over the lands inquestion as also over the plot abutting the lands in-question on the basis of which the pre-emption case was filed, against which petitioners filed appeal which was considered by the Collector, Siwan, who under orders dated 7.12.2004 passed in Pre-emption Appeal No. 397 of 2002, Annexure-4 having appreciated the fact that the lands in-question was near a market place as also a school as also surrounded by several houses on both sides of the State Highway allowed the appeal and dismissed the pre-emption case against which the pre-emptor Private Respondent Nos. 5 and 6 moved in revision before the Board of Revenue and the Board of Revenue although accepted the fact that the lands in-question was near a market place and surrounded by the houses yet allowed the revision and the pre-emption case holding that lands in-question being used for agriculture purpose on the date of the inspection the pre-emption case had to be allowed notwithstanding the fact that the land was near a market place and surrounded by houses and near to a school. Such finding of the Collector under the Act as also of the revisional authority is being assailed by filing the present writ application.

3. Learned counsel for the petitioners with reference to the trace map, as contained in Annexure-8 to the supplementary affidavit filed in compliance of the orders of this Court dated 7.8.2008 has submitted that the petitioners had purchased two Kathas of land of Plot No. 927 for raising a house as the same was near a market place as also near a school and surrounded by different houses raised on either side of the State Highway and as the purchase was for the purpose of raising the house the same was beyond the purview of the provisions contained in subsection (3) of Section 16 of the Act. In this connection he has relied on the judgment of the learned Single Judge passed in the case of Siya Devi & Ors. vs. The Addl. Member, Board of Revenue & Ors. reported in 2007 (Supp.) PLJR 162 paragraphs 8 and 9. With reference to the memo of inspection of the learned Deputy Collector Land Reforms dated 5.7.2002 it is submitted that as the plot in-question is situate contiguous north of the State Highway and is only 50 yards away from market place as also near to a school and surrounded by different houses raised on both sides of the State Highway, there should not be any difficulty in holding that the lands in-question was purchased for raising a house and if that be so then the same has to be beyond the purview of the provisions contained in sub-section (3) of Section 16 of the Act.

4. Counsel for the pre-emptor has refuted the submission of the learned counsel

for the petitioner on the basis of the findings recorded by the Deputy Collector Land Reforms in his memo of inspection in which it has been categorically recorded that on the date of inspection both the lands in-question as also the piece of land on the basis of which claim for preemption has been filed was being used for agriculture purpose and appreciating such fact the pre-emption case was allowed by the Deputy Collector Land Reforms as also by the revisional authority and this Court in writ jurisdiction should be slow in interfering with the finding recorded by the statutory authorities.

5. The Deputy Collector Land Reforms and the revisional authority have not disputed the fact that the lands inquestion is 50 yards away from a market place as also is surrounded by houses on both sides of the State Highway and is also near to a school, yet have allowed the pre-emption case and the revision application on the ground that on the day of inspection the lands in-question was being used for raising maize crop. That may be so as litigation had begun over the lands in-question petitioners although having purchased the lands for raising a house may not have begun construction activity on the date of inspection but that does not raise a presumption against the stipulation made in the sale-deed that the purchase was for the purpose of raising the house, as it is categorically stated in the sale-deed that two Kathas of land is being purchased at Rs. 1,50,000/- for raising a house.

6. In view of the clear stipulation in the sale-deed as also the fact that the lands in-question is just 50 yards away from the market place as also near to a school and is surrounded by different houses on both sides of the State Highway there should not be any difficulty in concluding that the same was beyond the purview of the provisions contained in subsection (3) of Section 16 of the Act. In view of the findings recorded above, the order dated 5.7.2006 passed by the Member, Board of Revenue, Bihar in Case No. 16 of 2005, Annexure-5 is set aside. This writ application is, accordingly, allowed.