

(1997) 04 PAT CK 0079
In the Patna High Court
Case No : L.P.A. No. 80 of 1996

Nathuni Singh Yadav and Another		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 2

Citation : (1997) 2 PLJR 287

Hon'ble Judges : S.N. Jha, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Ram Chandra Jha, Surya Narayan Roy and Birendra Kumar Shrivastav, for the Appellant; Satyendra Kumar Sinha and Hemendra Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal arises out of a proceeding u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Act").

2. Respondent No. 6, Naresh Ahir, sold 0.41 acre land of plot No. 187 situate in village Banouli in the district of Rohtas to Respondent No. 5 Ganga Ram. The Appellants claiming to be the co-sharer of the vendor and adjacent Raiyat of the land filed an application seeking pre-emption i.e. reconveyance of the land on the same terms and conditions. The application was allowed by the Deputy Collector Land Reforms (DCLR) as well as the Additional Collector in appeal. The Board of Revenue in revision preferred by Respondent No. 5 held that the transfer of the land does not come within the purview of Section 16(3) of the Act and, accordingly, set aside the said order and rejected the claim of the Appellants. The Appellants preferred writ petition which has been dismissed by learned Single Judge of this Court. They have now come in Letters Patent Appeal before this Bench.

3. From perusal of the order of the, Board of Revenue it would appear that the Additional member accepted the case of the purchaser i.e. Respondent No. 5, that he was a landless person, that he was a trader engaged in purchase and sale of vegetables and he had purchased the land for the purpose of constructing a residential house. In other words, he was not a "landholder" or a "Raiyat" within the meaning of the Act.

4. The Appellants have not disputed the correctness of the findings of fact, as noted above. Their Counsel, Mr. Ramchandra Jha, however, submitted that the purchaser need not be landholder in order to attract the provisions of Section 16(3) of the Act. The said term refers to Vendor. Where a transfer is made in favour of the person who is not either a co-sharer or an adjacent Raiyat of the land transferred, any co-sharer of the transferor or any adjacent Raiyat can make an application and seek reconveyance of the land in his favour. Counsel urged that a right of preemption may be a weak right, it nevertheless is a statutory right.

5. Section 16(3) of the Act, so far as relevant, reads as follows:

When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a Raiyat of an adjoining land, any co-sharer of the transferor or any Raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the sale deed.

6. In *Mukhi Mali v. State of Bihar* (1997 BBCJ 151) it has been held that application for pre-emption will lie only when all the three parties, the transferor, the transferee and the pre-emptor are landholders. The following observation may be quoted from paragraph 8 of the judgment:

In the case of *Kamala Kanta Goswami v. Balagobind Sah* (1971 BLJR 974) it was held that the land must be a land which is either used or capable of being used for agricultural and horticultural purpose and even if it is homestead it must be of a land holder as defined in Section 2(g). It is very clear from the observations that if the land is not homestead of a land holder that is a raiyat engaged in agriculture it will not be a "land" within the meaning of the Act and the provision of Section 16(3) will not be applicable to it. This decision was affirmed later on by a Full Bench of this Court in *Fakir Mohammad Vs. Salahuddin and Others*, where the same view was expressed and it was observed that "homestead" must be a homestead of the land holder. In view of the above authoritative decisions it is not necessary to dilate on the question inasmuch as on the facts it is clear that the vended land cannot be held to be a "land" of a land holder within the meaning of the Act and once it is so held the provision of Section 16(3) of the Act would have no application.

These observations were made in the context of vendor and not the vendee. But

it is well known that right of pre-emption is a weak right which can be defeated by any legitimate means (See Bishan Singh and Others Vs. Khazan Singh and Another, .

7. It should be kept in mind that the right of pre-emption, although created by statute, is a clog on the right of a person to acquire land. In Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi and Others, it has been observed:

There are no equities in favour of a pre-emptor, whose sole object is to obstruct a valid transaction by virtue of the rights created in him by statutes.

If a landless purchaser is not allowed the protection it may mean, taking the matter to its logical conclusion, that he cannot acquire any land, for in the event any claim is made by a co-sharer or adjacent Raiyat of the land transferred, he cannot resist the claim as in terms of the provisions, only such persons who are either co-sharers or adjacent Raiyats can resist the claim. This would put him to an unjust and inequitable position.

8. In the premises, we do not want to exercise our writ/letters patent jurisdiction in favour of the Appellants. This appeal is, accordingly, dismissed.