
(1998) 07 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 4311 of 1997

Pawan Kumar Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Registration Act, 1908 — Section 47

Citation : (1998) 3 PLJR 373

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Prabhat Kumar Singh, for the Appellant; Vishwanath Pd. Singh and Nand Kishore Singh, B.P. Verma and M.M. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioners, vendees have challenged the order passed by the authorities under the Land Ceiling Act whereby and whereunder the application for pre-emption u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 preferred by the contesting Respondent Nos. 5 and 6 have been allowed and upheld by the higher authorities.

2. In this case, the dispute relates to 5 kathas of lands of R.S.P Iot No. 199 ap pertaining to R.S. Khafa No. 429 situated in village Sadukha, P.S. Khanpur in the district of Samastipur. The Petitioners on the, basis of one Bharna deed dated 26th June, 1988 got executed a sale deed on 26th January, 1990 with respect to 4 kathas of land of R.S.P Iot No. 2906. Subsequently, the Petitioners purchased the land in dispute from Ram Sudhir Thakur by a sale deed dated 12th February, 1989, which was registered on 27th January, 1990.

3. The Respondent Nos. 5 and 6 filed a joint petition for pre-emption u/s 16(3) of the Ceiling Act on 16th April, 1990 for re-conveyance of land purchased by sale

deed dated 13th February, 1989, registered on 27th January, 1990, they were registered as Pre-emption Case Nos. 4 of 1990-91 and 3 of 1391-92. After notice and hearing the parties, the D.C.L.R., Samastipur allowed the application vide impugned order dated 2nd December, 1991. Thereafter, when the Petitioners preferred Appeal No. 153 of 1991-92 and thereafter, Revision Case No. 44 of 1996, they were also rejected by impugned orders dated 14th August, 1995 and 24th August, 1996 respectively.

4. Before the authorities, the Petitioners took plea that they also became the adjoining raiyat to the land in dispute in pursuance of subsequent sale deed dated 26th January, 1990, which was executed prior to filing of application for pre-emption, filed on 16th April, 1990. The aforesaid stand of the Petitioners were rejected by the authorities on the ground that the subsequent sale deed dated 26th January, 1990 was registered on 25th May, 1990 that is after the filing of application for pre-emption. The authorities held that the sale deed dated 26th January, 1990 was executed In favour of the Petitioners to defeat the application for pre-emption.

5. Before this Court, while the Petitioners took the similar plea relied on decisions of this Court reported in 1970 BLJR 101: Chandradip Singh and Another Vs. The Addl. Member, Board of Revenue and Others, and un-reported decision of this Court in the case of Ram Chandra Yadav (deceased) represented by Heirs Ram Bilas Prasad and Others Vs. Sri A. Wati Ao, Additional Member, Board of Revenue and Others, , which was upheld by Division Bench of this Court in L.P.A. No. 1043 of 1997 disposed of on 21st July, 1998.

6. On the other hand, according to the contesting Respondents Nos. 5 and 6, the authorities rightly passed the order, the subsequent sale deed having executed to defeat the pre-emption and for this he relied on decision of this Court reported in 1983 P.L.J.R. 639.

7. Further according to the Respondent Nos. 5 and 6, the Petitioners introduced false story that they were Bharna-dar of adjoining plot in question for which registered sale deed was executed on 6th June, 1990. Such false story was introduced after creation of forged and fabricated documents for trying to defeat legal claim of pre-emption of Respondent Nos. 5 and 6. The sale deed dated 26th January, 1990 has been created by the Petitioners after filing of the application for pre-emption by the Respondent Nos. 5 and 6, which was produced for the first time for registration on 25th May, 1990, which is the date of registration.

8. The provision of Section 16(3) of Ceiling Act fell for consideration in different cases before a Full Bench decision of this Court in Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others, held that the right of pre-emption is ipso facto defeated if before the date of application the transferee himself acquires the same status in relation to the transferred land as the applicant.

9. In another case of Chandradip Singh and Another Vs. The Addl. Member, Board of Revenue and Others, a similar question arose for consideration before a

Division Bench of this Court. In the said case, it was argued by the pre-emptor that the sale deeds in question were executed by the Respondents, a month and two days prior to the filing of the pre-emption application, but registration having been completed after filing of application for pre-emption, no benefit could have been given in favour of the transferee. This Court after considering the authorities on the subject, including the pronouncement of this Court and Supreme Court held that if a sale deed is executed before filing of the application for pre-emption, even if registered later such transfer is not *pendente lite* and the transferee became the owner of the property, in view of the provision of law contained in Section 47 of the Registration Act, prior to the filing of such application. Similar view has been taken by this Court in the case of *Raju Kumar Prasad v. Additional Member* reported in 1985 P.L.J.R. 215 and in the case of *Ganesh Prasad v. State* reported in AIR 1985 Pat 309 and the un-reported decision in the case of *Ram Chandra Srivastava* (*supra*).

10. The Supreme Court in the case of *Nanda Ballabh Gururani v. Smt Maqbool Begum* reported in Un-reported Judgment 1980 (Supreme Court) 597 held that the sale deed operates from the date of execution and not from the date of registration.

11. In the present case, it appears from the impugned order the Respondents never pleaded that the sale deed dated 26th January, 1990 was actually executed after 16th April, 1990 that is after filing of the application for pre-emption. No evidence was placed before the authorities to that effect nor any finding has been given by any one or other authority that the sale deed (dated 26th January, 1990) was subsequently executed. In the aforesaid circumstances, in absence of any evidence, the Respondent Nos. 5 and 6 cannot be allowed to raise the aforesaid plea for first time before this Court under the writ jurisdiction.

12. Thereby, following the decisions aforesaid of this Court, I hold that the Petitioners became adjoining *rajyat* to the land in dispute prior to the filing of the application for pre-emption and thereby, the said application preferred by Respondent Nos. 5 and 6 was not maintainable. Accordingly, the impugned orders dated 2nd December, 1991 passed by the D.C.L.R., Samastipur Appellate order dated 14th August, 1995 and revisional order dated 24th August, 1996 are set aside.

13. The writ petition is allowed. However, on the facts and circumstances of the case, there shall be no order as to costs