(2020) 01 PAT CK 0248

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3942, 8437 Of 1990

Prita Prasad And Anr APPELLANT

Vs

Md. Khalil And Ors RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act, 1961 — Section 16(3), 16(4)(1)
Limitation Act, 1963 — Section 5

Citation : (2020) 01 PAT CK 0248

Hon'ble Judges : Prabhat Kumar Jha, J

Bench : Single Bench

Advocate : N.K.P. Sinha, Sujat Kr. Sinha

Final Decision : Allowed

Judgement

1. The petitioners seek following reliefs:-

For issuance of a writ in the nature of certiorari or for any other appropriate writ, order or direction for quashing the Resolution dated 22.02.1990, passed by the Additional Member, Board of Revenue, Bihar, Patna in Revision Case No.651-652 of 1986 and the order dated 22.10.1986, passed by the Collector, Madhepura in Land Ceiling Appeal No.3 of 1985-86 and Land Ceiling Appeal No.4 of 1985-86 whereby the appellate court allowed both the appeals setting aside the order of the D.C.L.R., Madhepura in Land Ceiling Case No.15 of 1984-85 and Land Ceiling Case No.16 of 1984-85 and the revisional authority affirmed the order of the Collector allowing the preemption case being Land Ceiling Case No.15 of 1984-85 and Land Ceiling Case No.16 of 1984-85 filed by respondents no.1 to 3 (now respondents no.1 and 2 died and their legal heirs are substituted).

2. The petitioners of CWJC No.3942 of 1990 purchased 84 decimals of land from late Padmawati Devi, the mother of Urmila Devi, respondent no.4 from (old) CSP No.2024, (old) Khata No.9/kha corresponding to Revisional Plot No.1684, 3273 and 3724 and the petitioners of CWJC No.8437 of 1990 purchased 85 decimals of

land of (old) Khata No.9/kha, (old) Khesra No.2024 corresponding to Revisional Khata No.1684, Khesra 3273 and 3724 situated in village Jorgama in the district of Madhepura by registered sale deed dated 07.11.1984.

3. Respondents No.1 to 3 are the preemptors. They filed application on 18.03.1985 claiming the right of preemption over the aforesaid property under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as 'the Act') claiming themselves to be the adjoining raiyat on the basis that they owned R.S. Plot No.1686, 1685 and 1689, area 52 decimals adjacent to (old) Plot No.2024.

4. The petitioners of both the writ petitions upon being noticed in Land Ceiling Case No.15 of 1984-85 and Land Ceiling Case No.16 of 1984-85 appeared and filed written reply on 30.04.1985 stating therein that respondents no.1 to 3 are not the adjoining raiyats of the lands purchased by them from late Padmawati Devi. The preemptors-respondents no.1 to 3 are not the adjoining raiyats on their claim that they are the owner of (old) Khesra No.2027, new Khesra No.1686, 1685 and 1689 as the preemptors sold their lands of R.S. Plot No.1686, 1685 and 1689 through different sale deeds dated 17.07.1983 executed by Md. Khalil. Plots No.1685 and 1689 were sold to Narsingh Thakur. By sale deed dated 15.05.1980, portion of Plot No.1685 was sold to Lakshmi Mahto. Respondents No.1 to 3 also gifted Plots No.1686 and 1687 in the name of State of Bihar for construction of Urdu School by a registered deed of gift. The further case of the petitioners-vendees is that they purchased 84 decimals and 85 decimals respectively of Plots No.1684, 3273 and 3274. Total area of Plot No.1684 is 4.76 decimals. Half portion of Plot No.1684 from the northern side fell in the share of Radhawati Devi and half portion from the southern side fell in the share of Padmawati Devi, the vendor of the petitioners. The preemptor filed amendment petition claiming that Plots No.1690 and 1691 are adjacent to Plot No.1684 by way of amendment but the petitioners-vendees also filed a trace map showing that Plots No.1690 and 1691 are not in the southern portion of Plot No.1684 purchased by the petitioners.

5. The Deputy Collector Land Reforms, Madhepura dismissed both the preemption case being Land Ceiling Case No.15 of 1984-85 and Land Ceiling Case No.16 of 1984-85 by order dated 15.06.1985 holding that the preemptor, respondents no.1 to 3 have already sold Plots No.1686, 1685 and 1689 corresponding to old Plot No.2027 to different persons and (old) Plot No.2029 corresponding to new Plots No.1690 and 1691 do not fall in the adjoining southern portion of area of Plots No.1684, 3273 and 3274 purchased by the vendees from late Padmawati Devi.

6. The preemptor-respondents no.1 to 3 preferred Land Ceiling Appeal No.3 of 1985-86 and Land Ceiling Appeal No.4 of 1985-86 and the Collector allowed the appeal after setting aside the order of the Deputy Collector Land Reforms holding that from perusal of revisional survey map, Plots No.1690 and 1691 are in the boundary of Plot No.1684 although at the same time also held that Plots

No.1686, 1685 and 1689 owned by the preemptor claimed to be adjacent west of old Plot No.2024 corresponding to new Plots No.1684, 3273 and 3274 are sold by the preemptor much prior to execution of the sale deed but allowed the application of preemption of the preemptors. The petitioners of both the writ petitions filed Revision Case No.651-652 of 1986 which were heard analogously. The Additional Member, Board of Revenue, Bihar, Patna dismissed the revision holding that on the basis of perusal of revisional map, Plot No.1690 lies on the boundary of the land purchased by the petitioners and the petitioners thus filed this writ petition.

7. Learned counsel for the petitioners submits that late Padmawati Devi executed the sale deed on 07.11.1984 and the sale deed was presented to the Registrar and consequently sale deed was registered on 19.12.1984. The sale deed is deemed to have been registered on the date of execution of the sale deed, i.e., 07.11.1984. The preemptors filed preemption case on 18.03.1985 which is beyond the period of three months prescribed under Section 16(3) of the Act itself. The Collector under the Act has got no jurisdiction to condone the delay invoking Section 5 of the Limitation Act if the petition under Section 16(3) of the Act is not filed within three months from the date of execution/registration of the deed. Learned counsel placed his reliance in support of his contention on the judgment reported in 1986 PLJR 832 (Krishna Kumari Choudhary and another vs. Alliance Agro Industries Private Ltd. and others). Learned counsel for the petitioners further submits that the preemptors-respondents no.1 to 3 filed petition of preemption in form L.C.-13 of the Act. Schedule I of the form gives space for description of the lands owned by the preemptors falling in adjoining boundary of the purchased land. The preemptors mentioned in Schedule II of the L.C.-13 that they owned R.S.P. No.1686, 1685 and 1689, area 52 decimals carved out from C.S.P. No.2027 which are adjoining to adjacent west of old Plot No.2024 out of which the petitioners-vendees purchased 84 and 85 decimals of land respectively from late Padmawati Devi, the mother of respondent no.4 who got share from the southern side. The preemptor was very much conscious about the fact that the petitioners purchased the southern portion of Plot No.1684 but when the petitioners objected that the preemptors are not the adjoining raiyats of the area of Plot No.1684 purchased by the petitioners from the southern side, the preemptor filed an amendment petition claiming that he owned Plots No.1690 and 1691 which are in the western side of Plot No.1684. It is further submitted that the petitioners also filed sketch map depicting the entire area of Plot No.1684 and the purchased area of 1684. It is also submitted that the Deputy Collector Land Reforms has not passed any order on the amendment petition. Even the Collector has not passed any order on the amendment petition of the preemptors. The Deputy Collector Land Reforms specially held that Plot No.1690 claimed by the preemptors does not fall in the southern boundary of Plot No.1684 purchased by the petitioners. It is specific case of the petitioners that Plot No.1684 is a big plot measuring about 4.76 acres out of which extreme north half of Plot No.1684 fell in the share of Radhawati, the sister of Padmawati

and southern portion of Plot No.1684 fell in the share of late Padmawati Devi, the vendor of the petitioners but the Collector as well as the Additional Member, Board of Revenue, Bihar, Patna set aside the finding of the Deputy Collector Land Reforms holding that Plot No.1690 is adjoining to Plot No.1684 but did not consider the specific pleadings of the petitioners that they are purchasers from the southern portion of Plot No.1684 which fell in the share of late Padmawati Devi, therefore, the order of the Collector, Madhepura dated 22.10.1986, passed in Land Ceiling Appeal No.3 of 1985-86 and Land Ceiling Appeal No.4 of 1985-86 and the order of the Additional Member, Board of Revenue, Bihar, Patna dated 22.02.1990, passed in Revision Case No.651-652 of 1986 are not legally sustainable.

8. On the other hand, Mr. Lala Sachindra Kumar, learned counsel for the respondents submits that the petitioners did not raise the objection of limitation before any court with regard to maintainability of the preemption case on the ground of limitation. The deed was registered on 19.12.1984 and the preemptor filed preemption case on 18.03.1985 which is well within three months. It is further submitted that the disclosure made in form L.C.-13 is not mandatory. If no prejudice is caused to the vendees, the amendment can be made at any stage of the proceeding. It is further submitted that a Division Bench of this Court in the case of Khakhari Devi Vs. Member, Board of Revenue, reported in 1987 BBCJ 40 has held that any misdescription or non-description in the form L.C.-13 is not mandatory. The object of giving description in the form L.C.-13 is to enable the Collector before he exercises his power to ascertain the purchase price, the terms and conditions of the sale, the readiness of the applicant to have the land in question re-conveyed to him on the same term and condition in the sale deed, therefore, non-description in Schedule II of the form L.C.-13 filed by the preemptors, respondents no.1 to 3 with regard to R.S. Plot No.1690 and R.S. Plot No.1691 carved out from C.S. Plot No.2027 is not fatal as the preemptor brought this fact to the notice of the court that he owned R.S. Plot No.1690 and 1691 which fell in the western boundary of Plot No.1684 and, therefore, the order of the Collector as well as the Additional Member, Board of Revenue, Bihar, Patna does not require any interference.

9. Having considered the submissions of both sides, the question arises for consideration in these writ petitions are that (1) whether the preemptors are the adjoining raiyats of the purchased land and findings of the appellate authority as well as the revisional authority that Plot No.1690 fell in the western boundary of Plot No.1684 is sustainable particularly in view of the finding of the Deputy Collector Land Reforms that Plot No.1690 or 1691 are not in the boundary of southern portion of Plot No.1684 duly purchased by the petitioners measuring 84 and 85 decimals aggregate 1 acre 69 decimals and (2) whether the preemption application is itself barred by law of limitation as the same is not preferred within 90 days from the date of execution of the sale deed?

10. So far as first question is concerned, from perusal of form L.C.-13

(Annexure-1), It appears that the preemptors-respondents no.1 to 3 claimed to have owned R.S.P. Plot No.1686, 1685 and 1689 old Plot No.2027 and claimed preemption as their lands fall in the western boundary of old Plot No.2024 but did not mention Plots No.1690 and 1691 and later on preemptors claimed Plots No.1690 and 1691 to be their own and falling in the western boundary of Plot No.1684, corresponding to C.S. Plot No.2024. When the petitioners-vendees filed objection of the preemption case that the preemptors had already sold or gifted the entire area of Plots No.1686, 1685 and 1689 to different persons much prior to execution of the sale deed by late Padmawati Devi in favour of the petitioners-vendees, thereafter the preemptors filed amendment petition with a prayer to insert that Plots No.1690 and 1691 are owned by them and both the plots fell in the boundary of R.S.P. No.1684. The petitioners-vendees controverted this fact of the preemptors in his written argument as well as by filing a trace map. The specific and particular case of the petitioners-vendees are that Radhawati Devi and Padmawati Devi owned the entire land of C.S. Plot No.2024 from which R.S. Plot No.1684, 3273 and 3274 are carved out. From the northern portion of Plot No.3273, 3274 and 1684 which are amalgamated with each other fell in the share of Radhawati Devi and the southern portion of Plots No.1684, 3273 and 3274 fell in the share of Padmawati Devi. Padmawati Devi executed two sale deeds with regard to 84 decimals of land and 85 decimals of land in favour of the petitioners respectively and the sale deed was executed on 07.11.1984 and the sale deed was registered on 19.12.1984. The petitioners-vendees filed the trace map showing the purchased land by both the petitioners from Padmawati Devi, now deceased, mother of respondent no.4. The Deputy Collector Land Reforms on the basis of the facts and on perusal of the trace map come to a definite finding that the preemptors had alsready sold and gifted R.S. Plot No.1685, 1686 and 1689 which are in the western boundary of the purchased land, Plot No.1684, to different persons much prior to execution of the sale deed and R.S. Plots No.1690 and 1691 are not in the adjoining boundary of the purchased lands but the Collector in appeal come to a finding that on the basis of revisional survey map, Plot No.1690 is situated in the western boundary of Plot No.1684 and allowed the appeal. On the face of it, it appears that the Collector has committed material irregularity in not considering the pleadings and the sketch map brought on record by the petitioners-vendees that they purchased 1 acre 69 decimals of land from southern portion of Plot No.1684 and, therefore, the preemptors who owned only Plot No.1690 is not adjoining raiyats of the purchased land since the preemptors had already sold the lands bearing R.S. Plots No.1685, 1686 and 1689 falling in the boundary of southern portion of Plot No.1684 purchased by the petitioners and the Additional Member, Board of Revenue, Bihar, Patna also misread the evidence on record and could not notice the fact and over looked the trace map on record on the ground that the vendees did not produce any evidence although the trace map filed by the petitioners is not disputed by the preemptors and that the petitioners purchased southern portion of Plot No.1684 measuring 1.69 acres and Plot No.1690 is not falling in the southern portion of Plot No.1684 which fell in the share of Padmawati Devi, the vendor, rather Plot No.1690 is in the western part of northern portion of Plot No.1684 which fell in the share of Radhawati. Thus, I find that the order of the Collector, Madhepura dated 22.10.1986, passed in Land Ceiling Appeal No.3 of 1985-86 and Land Ceiling Appeal No.4 of 1985-86, heard analogously, and disposed of by the common judgment and the order of the Additional Member, Board of Revenue, Bihar, Patna dated 22.02.1990, passed in Revision Case No.651-652 of 1986 disposed of by the common judgment are not sustainable and fit to be set aside.

11. So far as the second question is concerned, it appears from the facts of the case that Padmawati Devi, mother of respondent no.4 executed two sale deeds on 07.11.1984 in favour of the petitioners of both writ petitions. The sale deed was registered on 19.12.1984 but the preemptors filed preemption case on 18.03.1985. Once the deed is registered, the title shall be deemed to have been transferred from the date of execution of the sale deed but of course the title is deemed to have been transferred from the date of execution of the sale deed but for the purpose of reckoning the period of limitation of the petition to be filed under Section 16(3) of the Act, the date of registration of the sale deed is material point, therefore, the preemption petition is not barred by limitation.

12. Now by the amendment (Bihar Act 6 of 2019) in Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act w.e.f. 25.02.2019, i.e., the date of publication in the official gazette, sub-section (3) of Section 16 of the Act is repealed and sub-section (4) is added. Sub-section (4) (1) of Section 16 states that after repeal of sub-section (3) of Section 16 of the Act, all proceedings pending before the Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or any other court shall be deemed to be abated. Resultantly on account of repeal of sub-section (3) of Section 16 by which right of preemption has been created the same right is extinguished. There is no existence of right of preemption and preemptor is not entitled to get the land reconveyed on the basis of ones being co-sharer or adjoining raiyat of a vended land. In this view of the fact also the writ petition is fit to be allowed.

13. In the result, the order of the Collector, Madhepura dated 22.10.1986, passed in Land Ceiling Appeal No.3 of 1985-86 and Land Ceiling Appeal No.4 of 1985-86 and the order of the Additional Member, Board of Revenue, Bihar, Patna dated 22.02.1990, passed in Revision Case No.651-652 of 1986 are set aside. The writ petitions are allowed.