(2003) 04 PAT CK 0063

In the Patna High Court

Case No : C.W.J.C. No. 395 of 2003

Rabia Khatoon APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0063

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Arvind Kumar Verma, counsel appearing for the petitioner and Mr. S. S. Asghar Husain, Senior Advocate appearing for contesting respondent No. 5.

2. This writ petition arises from a preemption proceeding. The petitioner before this Court is the purchaser and respondent No. 5 is the pre-emptor. The claim for preemption was initially allowed by the D.C.L.R. by his order, dated 17-11-1999 (Annexure 4J. The petitioner''s appeal and revision too were rejected by the Addl. Collector and the Board of Revenue respectively by orders. dated 18-3-2002 (Annexure-5) and 4-12-2002 (Annexure-6).

3. The petitioner has come to this Court challenging the aforesaid three orders and on hearing counsel for the parties, it becomes evident that this writ petition must be allowed on a short point: The sale deed with respect to the land in dispute was executed on 24-11-1998. Arid the petition for pre-emption was filed by respondent No. 5 on 23-8-99. But it is an admitted position that on that date the registration of the sale deed had not been completed in terms of Section 61 of the Indian Registration Act. In the writ petition, it is stated that the registration of the sale deed is yet to be completed and this statement is not denied in the counter-affidavit filed on behalf of respondent No. 5. It is, thus, evident that the claim of pre-emption wag not maintainable on 23-8-99 when the petition waa filed on behalf of respondent No. 5 and the orders passed on that petition are, therefore, completely without jurisdiction and illegal, (See the Division Bench decision of this Court in Kauleshwar Singh Vs. Parmanand and

Others, .

4. Mr. S. S. Asghar Husain, Senior Advocate tried to contend that even if registration was not completed on the date the application for per-emption was made, that would not render the final order passed in the proceeding illegal in case registration of the sale deed was completed in the mean time. In support of the contention, he relied upon certain observations made in the Supreme Court decision in Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., .

5. The contention is unacceptable both in the facts of this case and as a proposition in law. It is noted above, that according to the petitioner the registration of the sale deed is yet to be completed and this assertion has not been denied in the counter-affidavit filed by respondent No. 5.

6. In the facts of this case, therefore, there is no factual foundation for the submission made by Mr. Husain.

7. But purely as a legal position too, I am afraid the submission cannot be accepted. It may be noted that the Supreme Court decision in Hiralal Agrawal was considered in the Division Bench decision of this Court in Kauleshwar Singh and in para 4 of the Division Bench decision, it was held as follows :

"It is well established principle of law that ordinarily and generally rights of the parties are adjudicated with reference to the date of commencement of the proceeding, When an application is filed for pre-emption on a date when the pre-emptor had no right to file the application, and if effective action is taken on that application by the Collector on a date before the completion of registration, then the action is without jurisdiction, as the condition) precedent for entertaining the application is not fulfilled. There are no words in Section 16(3) or the rules framed under the Act to indicate that a proceeding without jurisdiction and being void ab initio becomes a good proceeding as soon as registration is complete during its pendency, The right of the pre-emptor has to bejudged on the commencement of the proceeding in the sense of taking action by the Collector and not on the date of the order."

8. The underlined passage in the above quotation fully answers the contention raised by Mr. Husain.

9. For the reasons discussed above. I have no hesitation in holding that the orders passed by the Revenue Authorities allowing the claim of pre-emption of respondent No. 5 are wholly illegal and without jurisdiction. The impugned orders are accordingly set aside and the claim of pre-emption is rejected.

10. In the light of this decision, the possession of the disputed land must be restored back to the petitioner forthwith. The concerned Revenue Authority is also directed to refund the money deposited by respondent No. 5 to him without any undue delay and preferably within two months, from the date of receipt/ production of a copy of this order in his office.

11. In the result, this writ petition is allowed but with no order as to costs.

