

(2006) 07 JH CK 0093

In the Jharkhand High Court

Case No : Writ Petition (C) No. 607 of 2001

Raghunath Ram (c) Raghubir Ram

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules,
1963 — Rule 19

Citation : (2006) 4 JCR 439

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

Bench : Single Bench

Advocate : Amar Kumar Sinha, Manoj Prasad and Navin Kumar, for the Appellant; M. Jalisur Rahman, J.C. to G.P.II, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This application has been preferred by the petitioner against the order dated 12th January, 2001 passed in Land Ceiling Appeal No. 10.18/1993-94, whereby and whereunder, the Addl. Collector, Giridih, white allowed the appeal in favour of the 5th respondent (Rukwa Devi), set aside the original order dated 2nd August, 1993 as was passed by the Land Reforms Deputy Collector, Giridih in Land Ceiling Casa No. 2/93.

2. The present case relates to pre-emption. The 5th respondent (Rukwa Devi), being preemptor, filed an application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. The petitioner is stated to be the purchaser. The application for pre-emption u/s 16(3) Of the Act was preferred in respect of land measuring 0.13 Acres out of plot No. 150 of khata No. 21, situated at village Kadmatol, P.S. Bengabad, District-Giridih. Claiming herself to be the adjoining raiyat, (5th respondent) claimed her right of

pre-emption over the purchaser, who was alleged not to be an adjoining raiyat. The case was registered as Land Ceiling Case No. 2 of 1993/9 of 1993-94. The petitioner appeared in the said case and objected the petition on the ground of maintainability, as neither the transferor was impleaded as party nor the person in whose favour the land was subsequently transferred, was impleaded as party-respondent in the said case. Accepting the plea of petitioner, the Deputy Collector, Land Reforms, Giridih dismissed the petition preferred by 5th respondent by order dated 2nd August, 1993 which was also affirmed by the appellate authority vide order dated 26th September, 1996 passed in Land Ceiling Appeal No. 13 of 1995-96.

3. For proper appreciation of the case it is necessary to look into certain facts, as may be discussed hereinbelow.

4. One Mohi Kumhar was the raiyat of land measuring 0.26 acre out of khata No. 21, plot No. 150, who transferred 50 per cent of the land i.e. 0.13 acre each in favour of his two daughter-in-laws, namely, Most Bhagia Devi (7th respondent herein) and Rukwa Devi (5th respondent-pre-emptor). Most. Bhagia Devi (7th respondent) transferred 0.13 Acre of her share in favour of the petitioner for a consideration of Rs. 45,000/- by sale deed dated 7th November, 1989, which was registered on 8th September, 1992. But in the meantime, the petitioner transferred the land in favour of one Dashrath Pandit (6th respondent herein) by registered sale deed dated 21st August, 1991.

5. Much after of such transfer, the 5th respondent (Rukwa Devi) although filed a petition u/s 16(3) of the Act on 4th December, 1992 against the transfer, which was originally made in favour of the petitioner, no challenge was made to the subsequent transfer made in favour of 6th respondent vide registered sale deed dated 21st August 1991 i.e. one year prior to the filing of the petition for pre-emption, This was the ground on which objection was raised by the petitioner, who also challenged the maintainability in absence of the original vendor and the subsequent vendee, who purchased the land, in question, from the petitioner. The objection being genuine, the D.C.L.R rejected the claim, which was also affirmed by the appellate authority.

6. It appears that the 5th respondent (Rukwa Devi) thereafter preferred Land Ceiling Revision. Case No. 298/96 before the Board of Revenue, Patna. In the said case the original vendor, Bhagia Devi and the subsequent purchaser, Dashrath Pandit were impleaded as party-respondents. The revisional authority set aside the appellate order and remanded the case to the appellate authority for fresh decision after notice to Dashrath Pandit and Bhagia Devi, who were subsequently impleaded as party on remand. It further appears that registered notices were issued on Bhagia Devi and Dashrath Pandit on 24th January, 1999 and thereafter without verifying the service report, the case was listed for hearing and was decided.

7. On notice though pre-emptor, 5th respondent, has appeared but did not

choose to file any affidavit, denying the averments made in the writ petition.

8. While dealing with a pre-emption matter u/s 16(3) of the Act, Ranchi Bench of Patna High Court notified Rule 19 of the Bihar Land Ceiling Rules 1963 in the case of Ramchandrn Singh v. Sub-divisional Officer, Hajipur reported in 1989 P.L.J.R 103. The Court held that the provision of Rule 19 Is mandatory in nature and in absence of any notice having been given to transferor, entire proceeding u/ s 16(3) is Vitiated In law. In the said case the court having noticed that the transferor who was being brought on record at revisional stage, held that the same will not cure the defects so far as non-compliance of Rule 19 is concerned. The present case of the petitioner is covered by the decision, rendered by Ranchi Bench of Patna High Court in the case of Ram Chandra Singh (Supra). In this case also the transferor, Bhagla Devi (7th respondent) was not impleaded as party before the 1st court and the appellate court. The subsequent purchaser, Dashrath Pandit (6th respondent) was not impleaded party who was impleaded for the first time in the revisional court in view of the findings aforesaid neither the order passed by the revisional authority can be upheld nor the subsequent order passed by the appellate authority on remand can be upheld by this Court. The order passed by the appellate authority dated 12th January, 2001 in Land Ceiling Appeal No. 18 of 1993-94 and the order dated January, 1998 passed by the revisional authority in Land Ceiling Revision Case No. 298/96 are hereby sat aside.

The writ petition is allowed. However, there shall be no order as to costs.