(2015) 06 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4326 of 1992

Rajeev Ranjan Prasad and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

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

Citation : (2015) 06 PAT CK 0028

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Waliur Rahman, Abbas Haider and Ranjay Kumar Singh, for the Appellant; Sanjay Kumar, Advocate (A.C. to A.A.G.), Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—The petitioners seek quashing of an order dated 14.02.1992 passed by learned Additional Member, Board of Revenue, Bihar, Patna, whereby, he has allowed the revision petition, being Revision Case No. 11 of 1991, preferred by the respondent Nos. 5 and 6 and set aside the judgment and order dated 31.12.1990 of learned Additional Collector, Purnea passed in Ceiling Appeal No. 215 of 1989-90. The learned Additional Collector, Purnea by order dated 31.12.1990 had set aside the order of the learned Deputy Collector Land Reforms, Sadar Purnea and allowed the right of pre-emption claimed by the petitioners. The learned Deputy Collector Land Reforms, Sadar Purnea by his order dated 02.01.1990, passed in Pre-emption Case No. 2 of 1989-90, had partly allowed the petitioners'' claim of pre-emption against which, an appeal was preferred by the petitioners, which was allowed by the learned Additional Collector, Purnea by the order dated 31.12.1990. The respondent Nos. 5 and 6 had preferred revision petition against the said order dated 31.12.1990, passed by the learned Additional Collector, Purnea before the Board of Revenue. Learned Additional Member, Board of Revenue by the impugned order dated 14.02.1999, allowed the Revision Petition No. 11 of 1991 and set aside the order of Appellate Authority, holding that the petitioners did not have the right of pre-emption under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 [hereinafter referred to as the ''Act''].

2. The original petitioner, namely, Srimati Savitri Devi, who had filed the pre-emption application under Section 16(3) of the Act, died during the pendency of the writ application and has been substituted by her heirs and legal representatives.

3. One Suchitra Devi (respondent No. 7), admittedly, executed a sale-deed dated 24.11.1987, which was subsequently registered in the year 1989, with respect to her lands admeasuring 0.42 acres of Plot No. 2073, 1.65 acres of Plot No. 2080 and 0.52 acres of Plot No. 2081, all of Khata No. 225 situate in Mauza-Sabdalpur, Purnea in the District of Purnea. It is the case of the petitioners that Plot No. 2073 was wrongly mentioned in the said sale-deed dated 24.11.1987, in place of Plot No. 2076, as the description of the land given in the sale-deed relates to Plot No. 2076 and not to Plot No. 2073.

4. The original petitioner, namely, Srimati Savitri Devi, filed an application under Section 16(3) of the Act, giving rise to Case No. 2 of 1989-90, before the learned Deputy Collector Land Reforms, Sadar Purnea, on the ground that she was adjoining Raiyat of the lands, sold through sale-deed dated 24.11.1987, being in possession of Plot Nos. 2026, 2077, 2078, 2079 and 2093, which were located adjacent west to the aforesaid vended plots. The pre-emption claim was resisted by respondent Nos. 5 and 6, taking a plea, inter alia, that there was a Government Canal running north to south of adjacent west of the vended plots and the land of the petitioner was situated adjacent west to the said Canal. The learned Deputy Collector Land Reforms, by his order dated 02.01.1990, allowed the pre-emption application in part with respect to 1 decimal 4 Katha of Plot No. 2080. From the order of the learned Deputy Collector Land Reforms, it appears that he came to a finding that only that part of the land, measuring 1 decimal 4 Katha of Plot No. 2080 fell on the west of the Canal, which touched the pre-emptor''s land, pertaining to Plot No. 2079. He was of the opinion that there was a Canal running between the rest of the vended land and the land belonging to the pre-emptor and, therefore, pre-emptor could not be treated to be adjoining Raiyat of other vended lands through the said sale-deed.

5. Against the said order dated 02.01.1990, passed by the learned Deputy Collector Land Reforms, the pre-emptor filed an appeal before the learned Additional Collector, Purnea, giving rise to Ceiling Appeal No. 215 of 1989-90. He allowed the said appeal by an order dated 31.12.1990, coming to a finding that though in the sale-deed, Plot No. 2073 has been mentioned, but the description of the boundaries of the said vended plot, as mentioned in the sale-deed, was of Plot No. 2076. On the basis of the location of Canal in revenue map, the learned Additional Collector came to a finding that Plot No. 2080, which was on the western side of the Canal was adjacent to Plot No. 2079 and portion of Plot No.

2077, belonging to the pre-emptor on the eastern side of the Canal was adjoining the vended land of Plot No. 2076. On the basis of such finding, the learned Additional Collector, Purnea allowed the appeal and sustained the preemption claim raised by the pre-emptor under Section 16(3) of the Act. He, accordingly, directed the respondents for reconveyance of the vended lands in favour of the pre-emptor.

6. Respondent Nos. 5 and 6, thereafter, preferred revision petition before the Board of Revenue, Bihar, giving rise to Case No. 215 of 1989/30 of 1990-91, which was finally allowed by an order dated 14.02.1992, passed by Sri M. Kumar, learned Additional Member, Board of Revenue. He rejected the pre-emption claim of the petitioner mainly on two grounds. He firstly held that there existed a Canal between the transferred land and the land of the pre-emptor, which demolished the petitioner''s claim of adjacency with the vended plots. He also came to a conclusion that the learned Additional Collector erred while recording that, in fact, Plot No. 2076 was transferred by the sale-deed, in question, despite the fact that Plot No. 2073 was mentioned in the sale-deed and the observation made by the learned Additional Collector was contrary to a report of the learned Deputy Collector Land Reforms, based on his physical verification and field visit. The learned Additional Member, Board of Revenue found the order of the learned Additional Collector to be erroneous on this ground, inasmuch as, the learned Additional Collector had not put forth any factor in order to counter the observations made by learned Deputy Collector Land Reforms. Learned Additional Member, Board of Revenue, while setting aside the order of learned Additional Collector, concluded that the Canal between the vended lands and the lands of the pre-emptor was owned by the State Government and, therefore, the claim of adjacency to the vended plots by pre-emptor could not be maintained.

7. A counter affidavit has been filed on behalf of the private respondent Nos. 5 and 6, who are the purchasers. It has been asserted in Paragraph - 4 (vi) of the counter affidavit that the learned Deputy Collector Land Reforms had made on-the-spot enquiry, in presence of the parties, for ascertaining the correct plot numbers of the lands, which were sold and also for the purpose of ascertaining, if the lands belonging to the writ petitioners were adjoining the lands in question. The learned Deputy Collector Land Reforms, upon physical verification/local inspection found that the vended lands were in three separate blocks and the lands, in question, were bifurcated by the Government Koshi-Canal from the lands of the pre-emptor and the pre-emptor was not found holding lands adjoining different blocks of Plot Nos. 2073 and 2081. The respondents have disputed the correctness of Khista Map, brought on record by the pre-emptor by way of Annexure-5 to the writ application and by way of Annexure-A to the counter affidavit, which photocopy of a certified copy of the Map of Mauza-Sabdalpur, prepared for the purpose of the land acquisition, has been brought on record in order to make out a case that the plots purchased by them are not adjacent to the plots of the pre-emptor, being separated by the Government Canal. They have also asserted that lands, appertaining to Plot Nos. 2073 and

2076, were purchased alongwith other plots through the sale-deed dated 24.11.1987. It has further been asserted in the counter affidavit that the pre-emptor, at no point of time, before filing of the writ application had asserted that Plot No. 2026 belonged to her being adjoining to Plot No. 2073. It has further been asserted that the pre-emptor does not have land on both sides of the Canal. Supplementary affidavits have also been filed on behalf of the respondent Nos. 5 and 6 in order to re-assert their claim that they had purchased the lands of Plot No. 2073 alongwith other plots to the sale-deed, in question, from Srimati Suchitra Devi. It has been stated in the supplementary counter affidavit, filed on 15.10.2012, that the said plots were purchased by them from Srimati Suchitra Devi, the vendor, who had acquired the said lands through three sale-deeds executed on three different dates, i.e., 19.12.1980, 13.02.1981 and 21.07.1982. It has further been asserted that through sale-deed dated 19.12.1980, the vendor, Srimati Suchitra Devi (respondent No. 7) had purchased the land in question, measuring 0.42 decimals out of Plot No. 2073. Through sale-deed dated 13.02.1981, she had purchased 1.65 acres of Plot No. 2080 and through the sale-deed dated 21.07.1982, she had purchased 0.52 decimals of Plot No. 2081. These lands, which were purchased by the vendor, Srimati Suchitra Devi, were subsequently transferred to respondent Nos. 5 and 6 through sale-deed dated 24.11.1987, in question. It has, accordingly, been stated that the plea that in fact land of Plot No. 2076 was transferred through sale-deed dated 24.11.1987 and not of Plot No. 2073, as mentioned in the sale-deed, is absolutely incorrect.

8. As regards the claim of the pre-emptor in the present writ application that Plot No. 2026 belonged to her, it has been asserted in the said supplementary counter affidavit that the said plot never belonged to her and, in fact, it was in the share of Ghusai Gope and upon the death of said Ghusai Gope, the plot was partitioned among the sons and heirs of said Ghusai Gope. The respondents have brought on record the photocopies of the sale-deeds, executed in favour of Srimati Suchitra Devi (respondent No. 7), through which, she had purchased the lands of Plot Nos. 2073, 2080 and 2081, which were subsequently transferred to respondent Nos. 5 and 6 through sale-deed dated 24.11.1987. Another supplementary affidavit has been filed by respondent Nos. 5 and 6 on 15.01.2014 in order to reiterate their claim that the Plot No. 2026 never belonged to the pre-emptor and it was recorded in the name of Gore Lal and Ghusai Gope. It has also been asserted that even the pre-emptor, in her application filed before the learned Deputy Collector Land Reforms, Sadar Purnea, in a proceeding under Section 16(3) of the Act, stated that lands of Plot No. 2026, upon mutual understanding of partition between Gore Lal and Ghusai Gope, fell in the share of Ghusai Gope. The application filed by the pre-emptor before the learned Deputy Collector Land Reforms in the said Ceiling Case No. 2 of 1989-90 has been brought on record by way of Annexure-E to the supplementary affidavit in support of this plea.

9. Mr. Waliur Raham, learned counsel appearing on behalf of the petitioners, while assailing the impugned order of learned Additional Member, Board of

Revenue, submitted that the learned Additional Collector, Purnea on the basis of appreciation of material available before him and on the basis of description of boundaries given in the sale-deed dated 24.11.1987, came to a correct finding that Plot No. 2073 was wrongly mentioned in the sale-deed in place of Plot No. 2076. He has submitted that in case of conflict between the description of boundaries and Khata numbers and plot numbers in a sale-deed, the description of boundaries, for identification of the lands, should prevail and has contended that mistake in the plot numbers should be treated as misdescription and such mistake should not affect the identity of the property transferred. In support of this submission, Mr. Rahman has relied upon following judgments of Supreme Court as well as of this Court, which are as follows:--

"(i) Sheodhyan Singh and Others Vs. Musammat Sanichara Kuer and Others, AIR 1963 SC 1879 : (1962) 2 SCR 753 .

(ii) 1981 BBCJ 96 [Moghal Singh and ors. Vrs. Member, Board of Revenue and ors.].

(iii) 1995 (1) BLJ 26 [Bhagirath Mandal and others Versus State of Bihar and others]."

He has further submitted that the learned Additional Member, Board of Revenue wrongly came to the conclusion that right of pre-emption under Section 16(3) of the Act was a weak right and has contended that such right is recognized by statute, which is mandatory and not discretionary. He has reiterated that Plot No. 2073 was wrongly mentioned in the sale-deed dated 24.11.1987 and on the basis of wrong description of plot numbers in the sale-deed, the petitioners'' right of pre-emption, recognized under Section 16(3) of the Act, could not be defeated.

10. Mr. Arun Prasad Ambastha, appearing on behalf of the respondent Nos. 5 and 6, on the other hand has submitted that admittedly there exists Government owned Canal between the property vended to them through the sale-deed dated 24.11.1987 and the lands belonging to the pre-emptor. He has contended that it is not the degree of adjacency, which is required to be determined for deciding pre-emption claim of a party, but it is physical and actual adjacency of the plots, which is relevant for deciding such claim. He has submitted that none of the plots vended through sale-deed dated 24.11.1987, falling on the eastern side of the Canal, were adjacent to the lands, which the petitioner claimed to posses. He has relied upon the following decisions of this Court in support of his submission, which are as follows:--

"(i) 1968 PLJR 1 [Mussamat Dukho Devi and Others Versus Uchit Lal Mandal and Others].

(ii) Ram Chandra Srivastava and Others Vs. Prasidh Narain Singh and Others .

(iii) 1973 PLJR 534 [Smt. Sudama Devi and Others V. Parmeshwar Narain Singh and Another].

(iv) Ram Pravesh Singh Vs. The Additional Member, Board of Revenue and Others .

(v) Smt. Mukhiya Devi and Another Vs. The Member, Board of Revenue, Bihar, Patna and Others, (2011) 4 PLJR 118 ."

11. I have perused the impugned orders under challenge and the documents brought on the record by the parties alongwith their pleadings and I have considered the rival submissions made on behalf of the parties. Learned Additional Member, Board of Revenue, in his impugned order has held that the observations made by the learned Additional Collector in his appellate order regarding Plot No. 2076 has no material basis. Upon perusal of the order of the learned Additional Collector, I find that he has not assigned any cogent reason to have a different view than the findings of the learned Deputy Collector Land Reforms, in his report, based on the spot physical verification of the disputed lands. The learned Deputy Collector Land Reforms apparently came to a finding that Plot No. 2073 was rightly mentioned as the vended land in sale-deed dated 24.11.1987. I do not find any discussion, worth acceptable, in the order of the learned Additional Collector for coming to a conclusion that it was land of Plot No. 2076, in fact, transferred in favour of respondent Nos. 5 and 6 through sale-deed dated 24.11.1987. By way of supplementary affidavit, respondent Nos. 5 and 6 have brought on record the sale-deeds with respect to lands purchased by the vendor, Srimati Suchitra Devi (respondent No. 7). This supports the position that said vendor had transferred the land appertaining to Plot No. 2073 and not the land appertaining to Plot No. 2076 of the concerned Khata. I do not find any pleading nor any evidence/material available on record to demonstrate that the vendor, respondent No. 7, had any right title interest over the lands of Plot No. 2076 and was competent to transfer the said lands to respondent Nos. 5 and 6.

12. Learned counsel for the petitioners is right in his submission that right of pre-emption under Section 16(3) of the Act is statutory rights, while relying upon Supreme Court decision in case of Suresh Prasad Singh Vs. Dulhin Phulkumari Devi and Others, (2010) 5 SCALE 771 : (2010) 6 SCC 441 : (2010) 6 UJ 2937 ". However, at the same time, a valid claim of pre-emption by a person under Section 16(3) of the Act, can be sustained only if he is in a position to establish that he is either be co-sharer or any co-sharer of the transferor or a Raiyat holding land adjoining the land transferred. It is not the case of the pre-emptor that she was the co-sharer of the vendor, respondent No. 7. Learned Additional Member, Board of Revenue, on the basis of materials available before him, has held that no land of the pre-emptor adjoined the land purchased by respondent Nos. 5 and 6 on the eastern side of the Canal. Existence of the Canal, though inoperative, owned by the State Government between the lands purchased by the respondent Nos. 5 and 6 and those belonging to the petitioner on the western side of the said Canal/land cannot be disputed.

13. In my opinion, learned Additional Member, Board of Revenue rightly came to a conclusion that the learned Additional Collector, Purnea in his appellate order

committed an error while holding that Plot No. 2073 was wrongly mentioned in the sale-deed dated 24.11.1987, in place of Plot No. 2076, as there was no cogent material available on record before him to come to this conclusion and to take a different view from the report of the learned Deputy Collector Land Reforms on the basis of physical verification of the land. There is no dispute about the legal principle, as canvassed by learned counsel for the petitioners, that on the basis of wrong description of property vended, right of pre-emption as adjacent Raiyat, cannot be taken away and in case of any dispute over the identity of the land vended, description of boundaries as given in the sale-deed should prevail. However, the said principle has no application in the facts and circumstances of the present case.

14. From the pleadings on record, it appears that there is no material to show that the vendor, respondent No. 7, had right title and possession with respect to lands of Plot No. 2076 and the lands which she had purchased from her vendor were of Plot No. 2073 and other plots, which she had transferred to respondent Nos. 5 and 6 through sale-deed dated 24.11.1987. I do not find any merit in such plea, on behalf of the petitioners that Plot No. 2073 was wrongly mentioned in the sale-deed in place of Plot No. 2076. Learned Additional Member, Board of Revenue has assigned correct reason for rejecting the pre-emptor''s claim under Section 16(3) of the Act that it is the pre-emptor, who has to satisfy that requirements of Section 16(3) of the Act were fulfilled for invoking the said provision. Learned Additional Member, Board of Revenue, in my opinion, by the impugned order has rightly interfered with the order of the learned Additional Collector and has rightly set aside the order of the learned Deputy Collector Land Reforms dated 02.01.1990, on the reasoning that a pre-emption claim can either succeed in full or it would fail and pre-emption claim could not be allowed partly. This view finds support from Division Bench decision of this Court in case of Smt. Sudama Devi V. Rajendra Singh (Supra), Paragraph - 8 of which is relevant and is being quoted hereinbelow:--

"8...................... If the land transferred is comprised in several plots, which is not in one block, then the pre-emptor has to establish that either he is a co-sharer of the plots transferred or an adjacent raiyat of them. The claim can be founded and succeed only if he establishes this fact in respect of all the plots if the various plots are different pieces and different blocks of lands. In other words, the pre-emptor has to establish his claim in respect of all the pieces or blocks of lands transferred and cannot succeed by establishing that he is a co-sharer or is an adjacent raiyat of only a few pieces or blocks of lands out of several transferred by one common sale deed. No apportionment is permissible. No partial claim of pre-emption can be allowed with respect to some of the pieces or parcels of lands on the pre-emptor''s establishing that he is a co-sharer or an adjacent raiyat of those pieces [vide (2) Ram Chabila Singh V. Ram Sagar Singh (1968 P.L.J.R. 279)]............................."

15. It is true that right of pre-emption under Section 16(3) of the Act is statutory

right, as has been held by the Supreme court in case of Suresh Prasad Singh v. Dulhin Phulkumari Devi and Ors. (Supra), relying on five Judges Bench decision of the Supreme Court in case of Shyam Sunder and Another Vs. Ram Kumar and Another, AIR 2001 SC 2472 : (2001) 6 JT 94 : (2001) 4 SCALE 710 : (2001) 8 SCC 24 : (2001) AIRSCW 2768 : (2001) 5 Supreme 492 , but at the same time, it is also true that such claim of preemption can only be allowed if the pre-emptor is able to establish that he is co-sharer/adjoining Raiyat of all the plots and such claim shall be disallowed where the pre-emptor fails to prove that he is co-sharer or adjoining Raiyat of all the plots.

16. In the present case, admittedly, the lands were purchased by respondent Nos. 5 and 6 in different blocks through one registered sale-deed. It was not the case of the pre-emptor that she was adjoining Raiyat of all the plots, so purchased, through registered sale-deed dated 24.11.1987. In such view of the matter, the claim of pre-emption has been rightly rejected by the learned Additional Member, Board of Revenue. The impugned order, therefore, needs no interference. I do not find any merit in this application.

17. This application is, accordingly, dismissed.

18. There shall be no order as to costs.

