

(1988) 05 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 76 and 1459 of 1982 and 2083 of 1985

Ram Chandra Singh and Others etc.

APPELLANT

Vs

Sub-divisional Officer, Hajipur and Others

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 1, 16(3)
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 — Rule 19, 19(4)
Sales of Goods Act, 1930 — Section 19, 4
Transfer of Property Act, 1882 — Section 54
Urban Land (Ceiling and Regulation) Act, 1976 — Section 42

Citation : AIR 1989 Patna 50 : (1989) 37 BLJR 121 : (1989) PLJR 103

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Gorakh Nath Singh and T.S. Tetarve, for the Appellant; Hirday Pd. Singh, Jr. Counsel to Standing Counsel, Yagendra Mishra and Mithlesh Kumar Khare, for the Respondent

Judgement

Satya Brata Sinha, J.—These three writ applications have been heard together and are being disposed of by this common Judgment. In C.W.J.C No. 76 of 1982 and C.W.J.C. No. 1459 of 1982, the petitioner has prayed for issuance of a writ of certiorari for quashing the order of the Sub-Divisional Officer, Hajipur dated 1-9-1981 passed in Case No. 14 of 1980-81 in connection with Case No. RI/ of 1986 and case No. R/16 of 1986 as contained in Annexure-5 to C.W.J.C. No. 76 of 1982 and Annexure-3 to C.W.J.C. No. 1459 of 1982 and further for a writ or order in the nature of mandamus directing the respondents to put the petitioner in possession of the lands whereby and whereunder. applications filed by him u/s 16(3)(i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1981* (hereinafter referred to as "the Act") were allowed by the learned Sub-Divisional Officer and wherefor sale deeds have been executed by the Court concerned in terms of Order 21, Rule 34 of the Civil P.C read with

Section 16(3)(ii) of the Act.

2. CW.J.C. No. 2083 of 1985 has been filed by the petitioners, thereafter for claiming inter alia therein the following reliefs : --

"(i) A writ in the nature of certiorari quashing the order dated 19-8-1969 contained in Annexure-3 and all subsequent actions in pursuance thereof be issued.

(ii) An appropriate writ, order or direction commanding the respondents first and third parties to forbear from interfering in any way with the petitioner's possession over (he land in dispute be issued."

Before proceeding to decide the issues involved in these three writ applications, the facts of the case may be noted

3. The lands in question which are involved in these writ applications admittedly belonged to the Mst. Samia. The said Mst. Samia executed two registered sale deeds on 22-11-65 in respect of the lands in question in favour of Mst. Mania (respondent No. 4 in both CW.J.C. No. 76 of 1982 and CW.J.C. No. 1459 of 1982). One Pritlal Singh, who was allegedly the co-sharer and was holding land adjoining to lands in question (the predecessor in interest of the petitioners in C.W.J.C. No. 1459 of 1982) filed two applicatioas for pre-emption purported to be u/s 16(3)(i) of the Act in respect of the lands covered under the aforementioned sale deeds and the case was registered as Case No. RI/15 of 1966 and RI/16 of 1966 respectively. Both the aforementioned applications were filed oh 3-12-1965 and the petitioners of the aforementioned two writ applications Mst. Mania appeared in the said cases and filed her show cause on 30th April, 1966 stating therein that Mst Samia had cancelled the sale deed on 10-3-1966 owing to non-payment of consideration amount and the original Kewala as also in view of the fact that the deeds of sale were with the vendor Mst Samia, she was not interested in the land inquestion.

4. According to the petitioner of C.W.J.C. No. 2083 of 1985 Mst. Samia had not paid the consideration money and as such the said two registered sale deeds dated 22-11-1965 were cancelled by a registered deed of cancellation dated 10-3-1966. A copy of the said deed of cancellation is contained in Annexure-1 to the aforementioned writ application. The further case of the petitioner of C.W.J.C. No. 2083 of 1985 is that, thereafter, Mst. Samia by a registered sale deed dated 11-7-1976 sold the said lands to Raghubar Saran Mishra for valuable consideration and the said vendee came in possession of the said lands and got his name mutated in the office of the State of Bihar. It is further alleged that the said Raghubarsaran Mishra sold 1 Katha 5 dhurs of lands out of the aforementioned lands to Nirmala Devi, wife of Upendra Mohan Mishra who also in turn sold the same to Smt. Indra Devi. It is alleged that the transferee came in possession of the said land. It has further been alleged that the son of Raghubar Saran Mishra, Shri Sheo Chandra Mishra by two registered sale deeds dated 9-5-1983 and 2-3-1983 sold the lands in favour of one Adarsh Grih Nirman

Samitl The petitioner 1 of the aforementioned case being a member of the said society, obtained settlement of the aforementioned lands in his favour by a registered deed dated 14-7-1983. It is further alleged that the I petitioner 1 came in possession of the said land and got his name mutated and started i paying rent and also constructed a tripple storeyed building thereon. It has further been asserted in the aformentioned writ application that the said Sheo Chandra Mishra son of Raghubar Saran Mishra by a registered sale deed dated 14-7-1984 transferred 5 kathas 2 dhurs land to petitioners 2 and 3 of C.W.J.C. No. 2083 of 1985 and put them in possession thereof. The aforementioned Sheo Chandra Mishra also sold 2 kathas of land to Smt. Krishna Devi and Daroga Sah, who constructed buildings thereon and have been residing therein with their respective family members. One Rajeshwar Prasad also allegedly purchased some lands and constructed a house thereon. It, further, appears that the aforementioned Pritlal Singh filed application for mutation in respect of the lands which were the subject-matter of two sale deeds dated 22-11-1965 and the said applications were allowed by the Sub-Divisional Officer, Hajipur by an order dated 19-8-1969 and the aforementioned Mst Mania was directed to convey the land to the pre-emptor Pritlal Singh by 22-9-1969.

5. It is alleged that Mst. Mania preferred an appeal against the said order u/s 30 of the said Act which was registered as Ceiling Appeal No. 77A of 1969-70 and the said appeal was dismissed by an order dated 5-6-1970. It is alleged that in the meanwhile the aformentioned Pritlal Singh died leaving behind the petitioners of C.W.J.C. No. 76 of 1982 and C.W.J.C. No. 1459 of 1982 as his heirs and legal representatives who were substituted in place of the original applicant. The Sub-Divisional Officer on 5-3-1970 issued notice to Mst. Mania to re-convey the land to the petitioner, but the said order was not complied with. However, the Sub-Divisional Officer, thereafter directed the Nazir to execute the Kewala on be half of Mst. Mania. The petitioner, thereafter filed an application on 1-9-73 praying therein that delivery of possession in respect of the lands in question be made in their favour. By an order dated 10-9-1973, the Sub-Divisional Officer rejected the aforementioned application inter alia on the ground that the lands in question were found to be in possession of Raghubir Missir, in a proceeding u/s 144 of the Code of Criminal Procedure. The petitioners of C.W.J.C. No. 76 of 1982 and C.W.J.C. No. 1459 of 1982 preferred appeals before the Additional Collector, who by an order dated 26-9-1974 directed the Sub-Divisional Officer to execute and register the sale deeds within three months from the date of the order passed by him. Thereafter, Mst. Mania preferred a revision before the Member Board of Revenue, which was dismissed for default. She then filed an application for restoration of the said case, which was also dismissed by an order dated 18-4-1977. It is alleged that Mst. Mania, thereafter filed an application under Articles 226 and 227 of the Constitution of India in this Court in C.W.J.C. No. 1582 of 1977 and the said writ application was permitted to be withdrawn in view of the statement made by the counsel appearing on behalf of the writ petitioner that she disclaimed any interest in the land Thereafter, the Sub-

Divisional Officer directed the Nazir to execute the sale deed on behalf of Mst. Mania Devi by an order dated 16-12-1978. Mst. Mania Devi, thereafter preferred an appeal against the said order, which was dismissed by the Collector by his order dated 29-8-1979. The appellate Court also held that in view of the fact that Mst. Mania Devi does not claim any interest in the case she had no locus standi to object to the execution of the sale deed by the Court. Thereafter a revision application was preferred by Mst. Mania before the Member Board of Revenue, which was also dismissed by an order dated 23-2-1980. Thereafter on 14-4-1980, the sale deeds were executed in terms of Order XXI, Rule 34 of the C.P.C. by the Nazir on behalf of the Sub-Divisional Officer, Hajipur. Thereafter another application was filed on 5-5-1980 by the petitioners of the aforementioned two writ applications for delivery of possession of the lands in question, but the Sub-Divisional Officer by an order dated 1-9-1981 rejected the said prayer on the ground that no specific remedy in the Act itself is provided for entertaining such an application. The petitioners of the aforesaid writ applications being C.W.J.C. No. 76 of 1982 and C.W.J.C. No. 1459 of 1982 are challenging the aforementioned order dated 1-4-1981 contained as Annexures-3 and 5 to the respective writ applications.

6. However, according to the petitioners of C.W.J.C. No. 2083 of 1985 in the aforementioned proceeding of pre-emption, no notice was served upon Mst. Samia. It is alleged that Mst. Samia died in the month of February, 1977 during the pendency of the Ceiling Appeals Nos. 38 and 39 of 1966-67 leaving behind a daughter Dukhia wife of one Ram Pratap Singh of Hajipur, but the said legal heir and representative was not brought on record. It is alleged that after the order of remand passed by the Additional Collector in the aforementioned appeals, the heirs of Mst. Mania aforementioned was not brought on the record, and the said preemption case itself stood abated. It has further been contended that in that view of the matter the judgment obtained by the heirs of the aforementioned Pritlal Singh were obtained as a result of fraud committed by the original applicant or his substituted heirs. It is further alleged that in view of the fact that no consideration money was paid by the Mst. Mania to Mst. Samia in respect of the two sale deeds dated 22-11-1965, the same were absolutely void ab initio and inoperative.

7. On the aforementioned grounds, the petitioners of C.W.J.C. No. 2083 of 1985 have sought for issuance of a writ of certiorari for quashing the aforementioned order dated 19-8-1969 as contained in Annexure-3 to the said writ application and all subsequent acts in pursuance thereof.

8. In view of the fact that fate of C.W.J.C. No. 76 of 1982 and C.W.J.C. No. 1459 of 1982 depend upon the result of C.W.J.C. No. 2083 of 1985, the contentions of the parties of the aforementioned cases are being noticed first.

8A. Mr. Yogendra Mishra, the learned counsel appearing on behalf of the petitioner in C.W.J.C. No. 2083 of 1985 raised the following contentions : --

A) No consideration having been passed to Mst. Samia from Mst. Mania in respect of the deeds of sale dated 22-11-1985, in respect whereof the application for pre-emption was filed, no title passed in favour of the purchaser and the said registered deeds of sale were absolutely void and in that view of the matter the application for pre-emption was not maintainable.

In this connection the learned counsel has referred to the decision in the case of Baldeo Singh v. Dwarika Singh, AIR 1978 Patna 97 and in the case of Kamal Dhari Rai v. State of Bihar, 1979 BBCJ 179.

B) Mst Samia having died in the year 1967, the purported application filed by the said Pritlal was void. It has further been contended that the transferor is a necessary party and in absence of the transferor, the proceeding could not have been initiated and or continued. In this connection the learned counsel has referred to Rule 19 of the Bihar Land Ceiling Rules, 1963 and the form being form No. LC-13. The learned counsel has also relied upon a decision of this court in the case of (Gujan Yadav and Another Vs. Sitaram Choudhary and Others,).

C) The land in question being situated in the Municipal area, the provisions of the Land Ceiling Act has no application. The learned counsel has in this connection relied upon a decision of this Court in the case of! Mohammad Yasin v. Abdul Rauf 1967 BUR 49.

IX has further been submitted that the lands in question come within the purview of the Urban Land Ceiling and Regulation Act and as a master plan was prepared in relation to the said land by Patna Regional Development Authority and as such the said application was barred by the provisions of the said Urban Land Ceiling and Regulation Act.

9. Mr. Gorakh Nath Singh in reply to the aforementioned contentions submitted as follows : --

A) In fact that consideration was passed to the vendor in respect of the deeds of sale dated 21-11-1965, which would be evident from the recitals made in the said deeds themselves. According to the learned counsel Mst. Mania was a tool in the hands of Mst. Samia. It was further submitted that recitals made in the aforementioned deeds of sale are binding on the parties and would be presumed to be correct.

B) Mst. Samia died in the year 1974 and not in the year 1967. In this connection the learned counsel has drawn my attention to paragraph 15 of the counter-affidavit filed in the aforementioned case being C.W.J.C. No. 2083 of 1985 which reads as follows :--

"That the statements in paragraph 19 of the writ petition that Mst. Samia died in the year 1967 is wholly false and baseless. As a matter of fact, Mst. Samia died in 1974. The other statement in regard to non-substitution of her heir in the pre-emption proceeding is not correct. The fact is that when the other side took the matter invoking its revisional jurisdiction the other side had got Mst. Dukhni

brought on the record of the case and it is well known that the substitution of the legal representative of a deceased party at any stage of the proceeding is for all stages of the case and as such, there is no substance in the point mentioned in paragraph 19 of the writ petition and there is no abatement.

It has further been submitted that the notice was duly served upon Mst. Samia.

C) The learned counsel further submitted that as the heir of Mst. Samia was substituted before the Member, Board of Revenue, the same served the requirement of law. In this connection the learned counsel has referred to a decision in *Brij Indar Singh v. Lala Kashi Ram* AIR 1917 PC 156.

D) The lands in question are not situated in the town of Hajipur, but are situated in the Dighikala and in that view of the matter, the provisions of the Urban Land Ceiling and Regulation Act, 1976 have no application to the facts and circumstances of the case.

10. It is now well settled that the question as to whether the title from the vendor to the vendee passed on execution of registration of documents for non-payment of consideration money entirely depends upon the intention of the parties. Such intention of the parties has to be gathered from the various factors. Only because in the sale deed dated 22-11-1965 executed by Mst. Mania to Mst. Samia it was mentioned that the consideration money has passed to the vendor from the vendee, the same is not decisive. It was open to the court concerned to take into consideration the various factors and circumstances existing at the time for the purpose of determining the intention of the parties.

11. In the instant case although admittedly Mst. Samia executed a registered deed of cancellation on 10-3-1966 and as contained in Annexure-1 to the writ application and subsequently Mst. Samia also executed registered deed of sale dated 11-7-1976 in favour of Raghubir Saran Mishra, those transactions although are relevant, but are not conclusive. However, in the instant case even Mst. Mania at the first opportunity pointed out that she does not have any right title or interest in respect of the lands in questions as she had not paid the consideration amount in respect of the deeds of sale dated 22-11-1965. This conduct on the part of the parties to the transaction are relevant for the purpose of determination of the question as to whether the intention of the parties to the said transaction was that no title will pass to the vendee unless the amount of consideration is paid or not. Although in a slightly different situation, a Division Bench of this Court in the case of *Kamaldhari Rai v. State of Bihar* (1979 BBCJ 179) (supra) held as follows : --

"Learned counsel for the vendor namely, respondent 5 contends before us that no consideration was passed to him by respondents 3 and 4. The counsel for respondents 3 and 4 also states that no consideration was paid to respondent 5 in respect of the impugned sale deed. Hence we hold that it was not a valid transfer as no consideration money was passed between the vendor and vendee. In view of the statement of the counsel of both the parties, it is clear that the

sale deed was actually not effected between the parties and according to them the title also did not pass from respondent 5 to respondents 3 and 4."

In this view of the matter, I am of the opinion that no title passed to Mst. Samia under the registered deed of sale.

12. From the order as contained in Annexure-3 to the writ application, it does not appear that any notice was ever issued to Mst. Samia or for that matter her legal heirs after her death. The Sub-Divisional Officer further did not consider the effect of non-impleading of Mst. Samia as party therein at all.

13. From a perusal of the Rule 19 of the Bihar Land Ceiling Rules, it is evident that the notice of the application has to be sent simultaneously to the transferor and the transferee by registered post with A/D by the applicants. In term of Rule 19(4) of the said Rules, the Collector is bound to issue notice to the transferor and give an opportunity of showing cause to the transferor as also the transferee. Rule 19 of the Rules is mandatory in nature and in absence of any notice having been given to the transferor, the entire proceeding becomes vitiated in law.

14. The very fact that in terms of the aforementioned Rules the applicant may be held to be entitled to be put in possession of the land in question with immediate effect, there cannot be any doubt that the transferor is a necessary party to a proceeding u/s 16(3) of the Act.

15. From the order-sheet dated 7-5-1966, it appears that the Sub-Divisional Officer took into consideration the fact that the vendee i.e. Mst. Mania did not come in possession of the land in question as she did not pay the consideration amount to Mst. Samia. He further took into consideration the fact that a deed of cancellation was executed by Mst. Samia. Even in the final order dated 30-4-1966, he took into consideration, the aforementioned objections as mentioned in the show cause filed on behalf of Mst. Mania, but he failed to take that fact into consideration while passing the impugned order as contained in Annexure-3 to the writ application. The said order, therefore, is vitiated in law by reason of non-application of mind on the part of the Sub-Divisional Officer while passing the impugned order as contained in Annexure-3 to the writ application, and thus the same is vitiated in law.

16. It is true that one Mst. Dukhi was brought on the record before the Member Board of Revenue, but in my opinion the same does not cure the defect so far as non-compliance of the Rule 19 of the said rule is concerned. The decision of the Privy Council in Brijendra Singh's case (AIR 1917 PC 156). is not on the point and does not apply to the facts of the present case. In that case the Privy Council was considering as to whether the introduction of plaintiff or the defendant for one stage of a suit amounts to his introduction for all stages. There is no dispute with regard to the aforementioned proposition of law that introduction of a plaintiff at one stage of a suit would amount to an introduction for all stages thereof.

17. However, in the instant case as has been held hereinbefore that the Mst. Samia having not been impleaded as a party, there had been a clear violation of Rule 19 of the Bihar Land Ceiling Rules, 1963 which being a mandatory provision the non-compliance thereof has resulted in vitiating the entire proceeding. Such a defect could not have been cured by bringing on record one of the heirs of Mst. Samia before the Board of Revenue. In view of the fact that the mandatory provision of Rule 19 of the Ceiling Rules, 1963 was not complied with, the entire proceeding became a nullity on that account. Such an invalid proceeding could not have been validated only because at a later stage Mst. Dukhi was brought on the record.

18. The question as to whether the land in question is situated within the municipal area or not is essentially a question of fact. Such a disputed question of fact cannot be determined in a writ application for the first time.

19. However, it may be observed that the Act applies to the whole of the State of Bihar. There, however, cannot be any doubt that the provisions of the Act apply only in respect of the agriculture lands and have no application to urban lands.

20. However, in my opinion, the submission made on behalf of the learned counsel for the petitioners that the provision of the Act will have no application in a case where the provisions of Urban Land Ceiling and Regulation Act, 1976 apply has no substance. There appears to be in my opinion no conflict between the provisions of the aforementioned two Acts. In any event in this case it is not possible to hold that the land in question is situated within the urban agglomeration as the said point was not taken before the courts below nor is there any finding in relation thereto. I am also of the view that Section 42 of the Urban Land Ceiling and Regulation Act, 1976 does not bar the application of the said Act and upon a harmonious construction of the provisions of both the Acts, it is clear that the provision of the said Act also applies to the agricultural land situated within the limits of municipality or notified area committee.

21. In the result C.W.J.C. No. 2083 of 1985 is allowed and C.W.J.C No. 1459 of 1982 and C.W.J.C. No. 76 of 1982 are dismissed. However, in the facts and circumstances of the case the parties will bear their own costs.