

(2013) 09 PAT CK 0049

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 713 of 1991

Ram Lagan Singh, Shambhu Singh, Birendra Kumar Singh
and Jai Mangal Singh

APPELLANT

Vs

The Additional Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 09 PAT CK 0049

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Kamal Nayan Chaubey, Mr. Ambuj Nayan Chaubey, Ms. Ritu Priyadarshini, Mr. Nagendra Dubey and Mr. Siddharth Harsh, for the Appellant; Manoj Kumar Sinha, Advocate for the Respondent 4(a) and 4(b), for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J.—Heard learned Senior counsel appearing on behalf of the petitioners and learned counsel appearing on behalf of the substituted respondent No. 4. However, none appears on behalf of the respondent Nos. 1 to 3 as also the respondent No. 5. The petitioners have approached this Court under Articles 226 and 227 of the Constitution of India, assailing the validity and correctness of order dated 30.5.1988 (Annexure-2) passed in Land Ceiling Appeal No. 81 of 1987 by the respondent Additional Collector, Saran, as also the impugned resolution dated 8.11.1990 (Annexure-4) passed in Case No. 233 of 1988 by the respondent Additional Member, Board of Revenue, Bihar, Patna, whereby and whereunder the claim of pre-emption raised on behalf of the original respondent No. 4 Har Prasad Singh, who is now dead and has been substituted by his heirs and legal representatives, was allowed, after reversing and setting aside the original order dated 25.7.1984 (Annexure-1) passed in

Land Ceiling Case No. 86 of 1982-83 by the respondent D.C.L.R., Sadar, Chapra, rejecting the claim of preemption of original respondent No. 4.

2. Brief facts are necessary to be noticed for disposal of the present writ petition. Original petitioner No. 1, who is also now dead and has been substituted by his heirs and legal representatives, as also petitioner No. 2 purchased 8 katha 12 dhurs of lands of different plots situate in three different villages, namely, Betwania, Cheriara and Kateyan through a registered deed of sale executed on 8.11.1982 from respondent No. 5. The aforesaid deed of sale was duly registered on 27.1.1983. Original respondent No. 4 Har Prasad Singh, claiming to be the adjoining raiyat, filed a petition u/s 16(3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "Act") raising his claim of pre-emption with respect to vended plots, which gave rise to Land Ceiling Case No. 86 of 1982-83 in the court of respondent D.C.L.R., Sadar, Chapra. On notice, original petitioner Nos. 1 and 2, being purchasers of the vended plots, appeared before the respondent D.C.L.R., Sadar Charpa and resisted the claim of preemption raised on behalf of original respondent No. 4. On consideration of the materials produced by the parties, claim of preemption raised on behalf of original respondent No. 4 was rejected by an order dated 25.7.1984 (Annexure-1) passed by the respondent D.C.L.R, Sadar, Chapra. The appeal preferred by the pre-emptor original respondent No. 4 was finally allowed by the impugned order dated 30.5.1988 (Annexure-2) by the respondent Additional Collector, Saran at Chapra, and revision preferred by the petitioners against the appellate order has been dismissed by the impugned resolution dated 8.11.1990 (Annexure-4). Hence, the present writ petition.

3. Learned Senior Counsel appearing on behalf of the petitioners has submitted that while passing the impugned orders, the appellate as also the revisional authorities have committed error of law by allowing the claim of pre-emption raised on behalf of the original respondent No. 4, as on his own showing the claim of preemption was raised on the ground that original respondent No. 4 purchased the lands adjacent to the vended plots through a registered deed of sale dated 5.8.1983 i.e. after purchase having been already made by the petitioners through a sale deed dated 8.11.1982 duly registered on 27.1.1983. It is contended on behalf of the petitioners that since the pre-emptor was not a boundary raiyat of all the vended plots on the date of purchase, therefore, the pre-emption application filed on behalf of the original respondent No. 4 could not have been entertained and was rightly rejected by the respondent D.C.L.R. It is highlighted that the impugned orders, as contained in Annexures-2 and 4 passed by the appellate and revisional authorities are contrary to the scheme, scope and mandate of Section 16(3) of the Act and, therefore, they are fit to be set aside by this Court.

4. Learned counsel appearing on behalf of the substituted heirs and legal representatives of respondent No. 4 has opposed the prayer made on behalf of the petitioners in the present writ petition. He submits that in view of concurrent

findings of fact recorded by the appellate authority as also the revisional authority, the writ petition is liable to be dismissed. However, he has fairly conceded that the original respondent No. 4 purchased adjacent plots of land through subsequent sale deed dated 5.8.1983, but according to him, when the order was being passed by the respondent D.C.L.R., the original respondent No. 4 had become boundary raiyat and, therefore, claim of pre-emption has been allowed by the appellate authority as also by the revisional authority, after reversing the order passed by the original authority.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the orders, as contained in Annexures-2 and 4, cannot be sustained in law. Apparently, the petitioners had purchased different plots of land situate in three different Villages, total area being 8 katha 12 dhurs, through a sale deed dated 8.11.1982, which was duly registered on 27.1.1983. Original respondent No. 4 claimed to have purchased the adjacent plots through subsequent sale deed dated 5.8.1983. The appellate authority as also the revisional authority have proceeded on a wrong assumption that purchasers are also required to be boundary raiyats of the vended plots and if the purchasers are not the boundary raiyats then claim of pre-emption raised on behalf of a boundary raiyat, even on the ground of purchase made by him on a subsequent date, has to be allowed. Apparently, the respondents Additional Collector as also the respondent Additional Member, Board of revenue have committed error of law. The whole scheme of pre-emption is that there should not be further fragmentation of plots of land and, therefore, if somebody wants to transfer his/her land, then preference is required to be given either to the co-sharer of the vendor or to the raiyats adjacent to the vended plots. Admittedly, on the date of sale made by respondent No. 5 in favour of the petitioners, respondent No. 4 was not the adjoining raiyat. He claims to have become the boundary raiyat by virtue of purchase made on 5.8.1983. Therefore, in that circumstance, the claim of pre-emption raised on behalf of the original respondent No. 4 could not have been allowed by the appellate authority and the revisional authority, after reversing the order passed by the original authority.

6. For the reasons recorded above, the impugned appellate order dated 30.5.1988 (Annexure-2) passed in Land Ceiling Appeal No. 81 of 1987 by the respondent Additional Collector, Saran as also the impugned revisional order dated 8.11.1990 (Annexure-4) passed in Case No. 233 of 1988 by the respondent Additional Member, Board of Revenue, Bihar, Patna, are hereby set aside, and the claim of pre-emption raised on behalf of the original respondent No. 4 is hereby rejected. In the result, the writ petition stands allowed. However, the parties are left to bear their own costs.