

(1993) 07 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8860 of 1991

Ram Naresh Sharma

APPELLANT

Vs

Vijay Sharma and others

RESPONDENT

Date of Decision : 07-07-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16, 16(3)
Registration Act, 1908 — Section 17

Citation : (1993) 2 PLJR 364

Hon'ble Judges : S.B. Sinha, J; R.N. Prasad, J

Bench : Division Bench

Advocate : Gopal Tiwary, for the Appellant; R.C. Ram, S.C. 8 for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Both these writ applications are directed against the order dated 7.9.1991 passed by the Additional Member, Board of Revenue, Bihar Patna (Respondent No. 6) in Board Revision Case No. 351 of 1990 and also in Board Revision case No. 352 of 1990 as contained in Annexure-4 to both the writ application whereby and whereunder he affirmed the order dated 2.4.1990 passed by the Collector, (Respondent No. 5) in L. A. Appeal No. 1 of 1989-90 and L.C. Appeal No. 2 of 1989-90 arising out of the order dated 24.4.1989 passed by the Sub-divisional Officer, Jehanabad in L.C. Case No. 1 of 1988-89 and in L.C. Case No. 2 of 1988-89 whereby the petitioner's application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act) was dismissed. The subject matter of the application for pre-emption was plot No. 701 appertaining to Khata No. 441 situate at village Sewati, P. S. Makhadumpur, District, Jehanabad. The said plot measures about 5 acres of land.

2. By reason of a deed of sale dated 10.7.1987 the respondent No. 3 sold 0.30

acres of land for a sum of 20,000/- in favour of the respondent Nos. 1 and 2 of CWJC No. 8860/91.

In the said deed of sale the petitioner has been shown to be holding land on the western side of the vended plot of land.

3. On 10.8.1987 itself the brothers of respondent Nos. 1 and 2, who are respondent in CWJC No. 8861 of 1991 purchased the remaining area of 0.31 acres of the said plot from Respondent No. 3.

4. The petitioners filed an application for pre-emption on 28.5.1988 on the ground that he is an adjacent raiyat. The case of the purchasers- Respondents in the said proceedings however, was that they were all boundary raiyats, having an area of 16 decimals of land which was acquired from Kedar Sharma by way of exchange. In the said proceeding an unregistered deed of exchange dated 15.6.1986 and a registered deed of exchange dated 26.7.1988 were produced.

5. The case of the petitioners before the courts below was that the said purported deeds of exchange were collusive document. By reason of the impugned order, the courts below have rejected the said contention of the petitioner.

6. Mr. Singh, the Learned Counsel appearing on behalf of the petitioner submitted that the courts below committed an error of law insofar as they failed to take into consideration that the respondent Nos. 1 and 2 did not acquire any right in respect of 16 decimals of land in question by reason of an oral exchange.

7. The Learned Counsel in support of his contention strongly relied upon a decision of this Court in Basudeo Rai Vs. Altan Rai reported in 1984 PLJR 349.

It was submitted that although the operative portion of the aforementioned judgment has been stayed by the Supreme Court but the ratio decideni thereof should be held to be binding upon this Court.

8. The Learned Counsel appearing on behalf of the respondent No. 1 on the other hand, submitted that the aforementioned decision cannot have any binding precedent.

9. It has concurrently been held by all courts below that the story of exchange as put forward by the respondent Nos. 2 and 3 was a correct one. The respondent Nos. 2 and 3 according to the courts below come into possession of 16 decimals of the land with effect from 15.6.1986 and the petitioners have acquired the land situate on the western boundary by reason of a registered deed of sale dated 10.7.1987 one year thereafter.

It has further been found as of fact that the respondent Nos. 2 and 3 had already amalgamated the said exchanged land with their purchased land. As they have also been stated to be the boundary raiyat in the deed of sale itself the factors of exchange of lands cannot be doubled.

10. In Basudeo Rai's case (Supra) it has been held that for the purpose of Section 16(3) of the Act execution of a document and its registration as required under the Indian Registration Act, is a must for operation of the various provisions of the said section however as the operation of the said judgment has been stayed by the Supreme Court, it cannot be held to be a binding precedent.

11. By reason of the provisions of Section 17 of the Indian Registration Act, transaction enumerated therein require registration.

If a document does not require registration under the Indian Registration Act a valid title passes to the vendee from the vendee. Thus, in our opinion, if the vendee's title can be taken into consideration for all purposes. It may therefore, not be correct to contend that although if the deed of exchange, the value of the lands whereof is less than Rs. 100/- may be considered to be a valid transaction for the purpose of acquisition of title, the same cannot be taken into consideration for the purpose of Section 16 of the said Act.

12. It would however be another thing to contend that by reason of an invalid transaction, no title has passed to the transferee at all. As the operation of the judgment in Basudeo Rai's case (Supra) has been stayed by the Supreme Court, we had applied our own independent mind to this aspect of the matter.

13. However, it is well known that the right of pre-emption is really a right of substitution. The said right of pre-emption is also a very weak right.

14. The courts below have concurrently come to a finding that there had been a bonafide transaction of exchange of land by and between the respondent Nos. 2 and 3 and the aforementioned Kedar Sharma. The said Kedar Sharma is in possession of the land belonged to the respondent Nos. 2 and 3. It has also concurrently been found by the courts below that the respondent Nos. 2 and 3 in fact have amalgamated their lands with their purchased lands.

15. In this situation, in our opinion, it will not be proper for this Court to exercise its discretionary jurisdiction in favour of the petitioner.

16. It is now well known that issuance of a writ of certiorari is a discretionary remedy. and this Court does not issue such a writ only because it is lawful to do so.

17. Reference in this connection may be made to Vijay Kumar Vs. The State of Bihar & ors. reported in 1993(1) PLJR 99, Sk. Ibrahim and Bibi Zulekha and Others Vs. State of Bihar and Others, . For the reasons aforementioned, this application is dismissed but in the facts and circumstances of this case, there will be no order as to costs.

R.N. Prasad, J.

I agree.