
(1993) 01 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4740 of 1992

Ram Paras Choudhary and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(3), 16(3)(ii)
Registration Act, 1908 — Section 61

Citation : (1993) 2 PLJR 260

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

Bench : Division Bench

Advocate : S.S. Dwivedi, Ramjee Prasad, Vijay Kumar Sinha No. I, Panditjee Pandey and Prakash Chandra Gupta, for the Appellant; R.C. Ram, S.C. VIII for the State, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—This application is directed against an order dated 25.2.1992 passed by the Additional Member, Board of Revenue, Bihar, in Case No. 4 of 1991, as contained in Annexure 3 to the writ petition, whereby the order dated 16.11.1989 passed by the L. R. D. C. and the order of the Collector, Vaishali, as the appellate authority, allowing the application of the petitioner claiming right of pre-emption u/s 16 (iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act") in respect of the lands bearing Khata No. 163 Khesra No. 454, Khata No. 493 Khesra No. 364/1221 and Khata No. 154 Khesra No. 650 comprising an area of .20, .03/4 and .01? decimal respectively situated in village Sahdullapur Satan, in the district of Vaishali have been set aside. The short facts of this case are that the lands in question originally belonged to Most. Parmeshwari Devi (respondent no. 5), who executed the sale deed in favour of respondent no. 6 on 23.11.1987 for a sum of Rs. 10,000/-. The document with respect to the said sale was registered on 2.6.1989. In the meantime, because of

non-payment of the consideration amount the sale deed was cancelled on 2.3.1988 by respondent no. 5 and later it was sold to one Anil Kumar Prabhakar. The cancellation deed was registered on 23.9.1989. The petitioners filed an application for pre-emption u/s 16(3) of the Act on 20.2.1988 before the S. D. O., Hajipur which was registered a Case No. 5 LC/87-88 and it appears from Annexure 4 that the same was later transferred to the court of L. R. D. C. vide S. D. O.'s order dated 31.8.1989 which was set aside.

2. The main question which has been urged on behalf of the petitioners is that the application for pre-emption filed after execution of the sale deed by respondent no. 5 but before the same was registered, according to the provisions of the Registration Act, cannot be rejected on the ground that the same was premature. In support of this submission Learned Counsel has relied on the decision reported in 1969 BLJR (S. C.) 186 (Hiralal Agarwal etc. Vs. Rampadarath Singh and others).

3. The Additional Member, Board of Revenue had rejected the contention advanced on behalf of the petitioners, who were respondents before him, upon relying on the principle of law laid down by the Supreme Court in the case of Ram Saran Lal and Others Vs. Mst. Domini Kuer and Others, and in the case of Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alshi and Others, , in which the Supreme Court has laid down that where a statute providing for the right of pre-emption lays down that it accrues only when transfer of the property takes place and such transfer is not complete except through a registered deed a sale (sic) filed before the sale deed is executed is premature as the right of pre-emption under the statute did not accrue till the transfer became effective through a registered deed.

4. The aforementioned, two cases, namely, Ram Saran Lal's and Radhakishan L. Toshniwal's case (Supra) have been noticed by the Supreme Court in Hiralal Agarwal's case (Supra). The Supreme Court in the facts of the said case held that the question whether right of reconveyance had accrued to the appellant of that case or not was academic for the purpose of that case as in that case the facts were that the application for pre-emption though filed on 26th November, 1964 but was placed for the first time before the Collector on 30th November, 1964 when the registration was completed and the transfer had also become complete. The Collector for the first time took cognizance of the aforementioned application for pre-emption on November, 30, 1964, on which date it was placed before him and on being satisfied that the conditions of section 16 of the Act were satisfied he passed order under sub-section 16 (3) (ii) of the Act for handing over possession from the transferee to the appellant. The fact of the said case was that the Collector had not even seen the application for pre-emption before November 30, 1964 and, therefore, the Supreme Court held that the Collector had rightly exercised the jurisdiction in entertaining the said application as the prescription to annex a copy of the registered deed is only directory and is laid down to furnish necessary information to the Collector to enable him to proceed

with it. While considering the object of rule 19 of the Rules and Form L. C. 13 it was held that the same are directory instructions and if there is sufficient compliance thereof the application can be validly entertained by the Collector. The Supreme Court has further held that annexing a certified copy of the sale deed where a copy of the registered deed is not yet available on account of the process of registration not having been completed would be sufficient compliance of the directory prescription so long as it furnishes information necessary to proceed with the application and the fact that a copy of the registered deed was not furnished along with the application was not fatal to the application nor did such omission deprive the Collector of his jurisdiction to entertain it nor did it vitiate the proceedings before him or the order thereon made by him.

5. In the present case nothing has been produced to show that the Collector within the meaning of the Act had taken cognizance of the application for the first time after 2.6.1989 i.e., the day the sale documents were registered. The facts of the present case would show that the sale deed was executed as far back as on 23.11.1987, whereafter the application for cancellation was filed on 2.3.1988, i.e., prior to the registration of the document and the same was also cancelled and the application for pre-emption was filed on 20.2.1988, on which the order was passed on 16.11.1989 i.e., after the cancellation deed was registered on 23.9.1989.

6. However, the Supreme Court has not overruled the principle laid down in Ram Saran Lal and Kadhakishan L. Toshniwal (Supra) cases in which it has been held that the sale is complete only when the registration of the sale deed is completed as contemplated by section 61 of the Registration Act and, therefore, a suit based on such a demand of the right of pre-emption before the date of completion of registration is premature.

7. In the present case, on the facts as enumerated above, there cannot be any dispute that the pre-emption application was prematurely filed on 20.2.1988 i.e., much prior to the date of registration of the sale deed, and, accordingly, the pre-emptor had no right of reconveyance on the said date.

8. Accordingly, I am of the view that the Additional Member, Board of Revenue has rightly allowed the application of respondent no. 5 and set aside the order passed by the L. R. D. C. and the Collector, Vaishali. This application is, accordingly, dismissed, but in the facts and circumstances of the case, there shall be no order as to costs.

S.B. Sinha, J.

I agree.