(2013) 07 PAT CK 0038

In the Patna High Court

Case No : CWJC No. 9552 of 2012 and I.A. No. 4375 of 2012

Ram Singhasan Thakur APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34
Constitution of India, 1950 — Article 226

Citation : (2014) 2 PLJR 47 : (2013) 4 PLJR 51

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Jitendra Prasad Singh and Anil Kumar Roy, for the Appellant; Kumar Sachin for the Respondents No. 1 to 3, Sandeep Kumar and Atul Bihari Pandey for the Respondents No. 4 to 10, for the Respondent

Judgement

Birendra Pd. Verma, J.—Heard the parties. The petitioner has approached this Court under Article 226 of the Constitution of India assailing the validity and correctness of order dated 20.3.2012 (Annexure-6) passed in Ceiling Revision No. 148 of 2010 by the respondent Divisional Commissioner, Patna, whereby and whereunder he has affirmed the order dated 1.7.2010 (Annexures-3 and 3/1) passed by respondent District Collector, Bhojpur, Ara, analogously in Ceiling Appeal Nos. 1 of 2009-10 and 2 of 2009-10, reversing and setting aside the order dated 14.7.2009 (Annexures-2 and 2/1) passed by the respondent D.C.L.R., Jagdishpur (District-Bhojpur) in Ceiling Case No. 5 of 2008-2009 and 6 of 2008-2009 dismissing the claims of pre-emption made by the respondent Nos. 4 to 10 with respect to the lands purchased by the wife of the petitioner.

2. In order to appreciate the question of law involved in the present proceeding, and rival claims raised on behalf of the parties, relevant facts are required to be enumerated. One Mostt. Ram Daso Kuer, widow of late Ram Pravesh Thakur, executed two sale deeds dated 13.7.1994 in favour of one Kamla Devi, wife of

Ram Singhasan Thakur, the present writ petitioner. By sale deed No. 10154 dated 13.7.1994 aforesaid Mostt. Ram Daso Kuer transferred 10 decimals of land of khata No. 103 appertaining to khesra No. 1419 situate at Village-Charghat, P.S.-Bihiya, District-Bhojpur. By another sale deed No. 10155 dated 13.7.1994 aforesaid Mostt. Ram Daso Kuer transferred 1534 decimals of land of khata No. 103 appertaining to khesra No. 1145 and 15% decimals of land of khesra No. 1146, total area 31 decimals of land situate at Village-Charghat P.S.-Bihia, District-Bhojpur. As stated above, both the sale deeds were executed on 13.7.1994 in favour of the aforesaid Kamla Devi and the photocopy of sale deeds have been brought on record as Annexures-1 and 1/1 respectively.

3. Learned counsel appearing on behalf of the petitioner submits that both the sale deeds were duly registered on 6.9.1994. Original copy of the aforesaid two sale deeds have been produced by learned counsel appearing on behalf of the petitioner for perusal of this Court, which also show that the aforesaid sale deeds were executed on 13.7.1994.

4. Admittedly, no pre-emption case in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act, 1961 (in short "Land Ceiling Act") was filed by the respondent Nos. 4 to 10 within the statutory period of three months. It has been asserted in Paragraph 12 of the writ petition, which has not been denied by the contesting respondents in their counter affidavit, that the private respondents firstly filed T.S. No. 208 of 1997 in the court of learned Subordinate Judge-I, Ara, for declaration of aforesaid two sale deeds as null and void, but the said suit was dismissed for want of prosecution on 21.7.2011. At this stage, learned counsel appearing on behalf of the respondent Nos. 4 to 10 submits that a Misc. Case has been filed on behalf of the respondent Nos. 4 to 10 before the learned Subordinate Judge I, Ara, seeking restoration of the aforesaid T.S. No. 208 of 1997 and that is still pending.

5. While the aforesaid T.S. No. 208 of 1997 was still pending, the respondent Nos. 4 to 10 filed two pre-emption cases in terms of Section 16(3) of the Land Ceiling Act on 3.11.2008 before the respondent D.C.L.R., Jagdishpur, Bhojpur, which gave rise to Ceiling Case Nos. 5 of 2008-09 and 6 of 2008-09. Admittedly, by the time both petitions u/s 16(3) of the Land Ceiling Act were filed, original vendee Kamla Devi had passed away. Therefore, respondent Nos. 4 to 10 in their pre-emption petition impleaded her heirs and legal representatives as opposite parties. It is relevant to mention here that the vendor Mostt. Ram Daso Kuer had not been impleaded as a party in the preemption cases filed by respondent Nos. 4 to 10. Learned counsel appearing on behalf of the contesting respondents submits that the vendor Mostt. Ram Daso Kuer died in the year 2002, therefore, she was not impleaded as a party in the preemption cases.

6. Both the pre-emption cases filed by the respondent Nos. 4 to 10 were dismissed by order dated 14.7.2009 passed by the respondent D.C.L.R., Jagdishpur, Bhojpur by separate orders. Both the orders dated 14.7.2009 passed by the respondent D.C.L.R., Jagdishpur, Bhojpur have been brought on record as

Annexures-2 and 2/1 respectively. In the aforesaid orders dated 14.7.2009, respondent D.C.L.R. has recorded a finding of fact that both the sale deeds were registered on 6.9.1994 and both the pre-emption cases were filed on 3.11.2008.

7. Respondent Nos. 4 to 10, being aggrieved by the aforesaid orders passed by the original authority, preferred two Ceiling Appeals before the respondent District Collector, Bhojpur, Ara, u/s 30 of the Land Ceiling Act, which gave rise to Ceiling Appeal Nos. 1 of 2009-10 and 2 of 2009-10. In both the Ceiling Appeals only the petitioner was impleaded as respondent. However, after hearing the parties the aforesaid Ceiling Appeals have been allowed analogously by an order dated 1.7.2010. The aforesaid orders have been brought on record as Annexures-3 and 3/1. Thereafter, the petitioner, being heir and legal representative of the original purchaser, being her husband, filed Ceiling Revision No. 148 of 2010 before the respondent Divisional Commissioner, Patna, which has been dismissed by the impugned revisional order dated 20.3.2012 (Annexure-6). Hence, the present writ petition.

8. From the facts enumerated above, and the materials available on record, it is apparent that the petitioner is the heir and legal representative of original purchaser Kamla Devi, being her husband. Respondent Nos. 4 to 10 are the pre-emptors. However, vendor-Most. Ram Daso Kuer was never impleaded as party in the preemption cases by the pre-emptors.

9. Learned counsel appearing on behalf of the petitioner has assailed the impugned appellate order and revisional order basically on two grounds, firstly, the pre-emption applications of the respondent Nos. 4 to 10 with respect to the vended lands were filed after unduly long delay of more than 14 years from the date of registration of both the sale deeds. It is contended that neither any petition for condonation of delay was filed by the pre-emptors nor any order was passed by the respondent D.C.L.R. for condonation of such long delay of 14 years, yet the preemption applications were entertained by the respondent D.C.L.R., but on merit it was dismissed. However, claims of preemption have finally been allowed by the appellate and the revisional authorities. Secondly, neither original vendor Ram Daso Kuer nor her heir and legal representative was impleaded as party in the pre-emption cases, and on that ground also the pre-emption applications filed on behalf of the respondent Nos. 4 to 10 were not maintainable. Consequently, according to learned counsel, the orders impugned have vitiated in law and are fit to be set aside by this Court.

10. Learned counsel appearing on behalf of the respondent Nos. 4 to 10 has opposed the prayer made in the present application and has supported the impugned orders. On the question of limitation, it was submitted on behalf of the respondent Nos. 4 to 10 that certified copy of the sale deeds were not made available to them in the year 1994. It was supplied to them after a long time in the year 2008, and thereafter the pre-emption applications were filed in the year 2008 within the time. On the question of non-impleadment of vendor-Most. Ram Daso Kuer or her heir and legal representative, it was submitted that since the

pre-emptors themselves claim to be co-sharers, therefore, even if other heirs and legal representatives were not impleaded as party, no prejudice has been caused with respect to the pre-emption cases filed against the purchaser. In support of his above contention, he has placed reliance on a judgment of this Court in the case of Raja Ram Singh Vs. The State of Bihar and Others,

11. After having heard the parties, and on consideration of the materials available on record, this Court finds that there is incurable defects in the pre-emption claims raised on behalf of the respondent Nos. 4 to 10 with respect to transfer of lands in favour of wife of the petitioner through two sale deeds dated 13.7.1994 duly registered on 6.9.1994. Therefore, the orders impugned cannot be sustained in law.

12. Section 16(3) of the Land Ceiling Act provides that when any transfer of land is made to any person, other than a co-sharer or an adjoining raiyat, then such co-sharer of the vendor of the land or adjoining raiyat shall be entitled to file an application before the Collector in the prescribed manner for transfer of such land to him on the terms and conditions contained in the sale deed. It further provides that such an application shall be filed within three months from the date of registration of the document of transfer. For better appreciation, Section 16(3) of the Land ceiling Act is reproduced hereinbelow, which reads as follows:--

16(3)(i) When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision:

Provided that where an application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under Clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.

13. Coming to the present case, this Court finds that both the sale deeds were executed on 13.7.1994, and were duly registered on 6.9.1994 as per findings of respondent D.C.L.R., Jagdishpur. Therefore, the respondent Nos. 4 to 10, claiming to be co-sharers of the vendor were entitled to file their pre-emption claims with respect to the vended lands within a period of three months from the date commencing from 6.9.1994 i.e. the date of registration, but in the present case both the preemption cases were filed on 3.11.2008 i.e. after 14 years of the date of registration of the impugned sale deeds. A certified copy of the application filed u/s 16(3) of the Land Ceiling Act by the respondent Nos. 4 to 10 before the respondent D.C.L.R. has been produced by learned counsel appearing on behalf of the petitioner, where in paragraph 5 the respondent Nos. 4 to 10 have admitted that sale deeds were executed on 13.7.1994 and were registered on 6.9.1994. Relevant portion of Paragraph 5 of the petition filed by the respondent Nos. 4 to 10 before the respondent D.C.L.R., Jagdishpur (Bhojpur) is reproduced hereinbelow for better appreciation of the maintainability of the claims of pre-emption filed on their behalf, which reads as follows:--

That, the sale deed No. 10154 executed by Ram Daso Kuar dated 13.7.1994, which was registered on 6.9.1994 with respect to the following lands.

14. Learned counsel appearing on behalf of the petitioner further submitted that the petitioner, being opposite party in the pre-emption cases, has specifically taken a plea that pre-emption cases filed by respondent Nos. 4 to 10 were barred by limitation. He has drawn attention of this Court to the averments made in paragraph 15 of the show cause filed on behalf of the petitioner wherein it was specifically stated that sale deeds were registered in 1994 and pre-emption applications could have been filed within 3 months, but they have been filed after 14-15 years, which are barred by limitation.

15. Despite specific averments made in Paragraph 5 of the petition filed on behalf of the respondent Nos. 4 to 10 as also in Paragraph 15 of the show cause filed by the petitioner, there is nothing on record to show that limitation occurring in filing the pre-emption applications was ever condoned by the respondent D.C.L.R., rather he went on to consider the cases of the parties on merit and rejected the pre-emption claims of respondent Nos. 4 to 10 by his order dated 14.7.2009.

16. This Court is of the considered opinion that pre-emption applications filed on behalf of the respondent Nos. 4 to 10 suffer from non-joinder of necessary party also. In a pre-emption case u/s 16(3) of the Land Ceiling Act, vendor is always a necessary and important party. Even if original vendor Mostt. Ram Daso Kuer had died prior to filing of the preemption case, then averments should have been made by the pre-emptors that who are her heirs and legal representatives and whether such heirs and legal representatives have been impleaded as parties in the pre-emption cases or not. Merely on the ground that pre-emptors are co-

sharers of the original vendor, the requirement of law is not satisfied.

17. The issue regarding non-impleadment of vendor as a party goes to the root of the matter and makes the pre-emption case unsustainable, came up for consideration before a Bench of this Court in the case of Raja Ram Singh vs. State Bihar (supra). For better appreciation, paragraph 10 of aforesaid judgment is reproduced herein below, which reads follows:--

All these indicate that the transferor is a necessary party in the application u/s 16(3) of the Ceiling Act According to the Act and the Rules the transferor is also entitled to be heard before the application is disposed of. In fact, the provisions contained in Section 16(3) of the Act is a restriction on the right to sell the property by a lawful owner thereof, although a reasonable restriction. But, when such a right is sought to be restricted, the person concerned has a right to be heard before an order is passed in respect of any conveyance by him. Besides this, there may be a case in which an owner of a land has not, in fact, sold his property and the right of pre-emption is sought to be enforced on the basis of a fake sale deed. Unless the owner of the property who is supposed to have transferred a particular land is heard in the matter, he will be seriously prejudiced if he is not made a party in the proceeding. I am, therefore, of the opinion, that in every case of pre-emption not only the transferee but also the transferor is a necessary party and if any of them has not been impleaded as a party, the application must be dismissed at the initial stage being not maintainable. The fact that the transferor was not made a party and notices of the proceeding were not sent to him, has not been denied. The application of respondent No. 3 for pre-emption, therefore, was not maintainable and should have been dismissed on this ground alone. It is well established that right of pre-emption is a very weak right and, therefore, the pre-emptor is required to follow each and every mandate of law.

(Emphasis added by me)

18. The pre-emption claims raised on behalf of the respondent Nos. 4 to 10 are not maintainable on yet another ground. Now, admittedly, with respect to two sale deeds, the respondent Nos. 4 to 10 filed T.S. No. 208 of 1997 in the Court of learned Sub-Judge-I, Ara, with a prayer for declaring the aforesaid two sale deeds as null and void and that matter remained pending before its dismissal for non-prosecution by an order dated 21.7.2011. During the pendency of the aforesaid Title Suit, the respondent Nos. 4 to 10 lodged the aforesaid two pre-emption cases before the respondent D.C.L.R. Unfortunately, in the pre-emption applications filed on behalf of the respondent Nos. 4 to 10, there is no averment at all about pendency of the aforesaid T.S. No. 208 of 1997 and this material fact has been concealed by the pre-emptors respondent Nos. 4 to 10. This also shows that the pre-emptors did not file their pre-emption cases with clean hands.

19. All the three major defects, as discussed above, are vital for decision of claim u/s 16(3) of the Land Ceiling Act. The respondent D.C.L.R. should have taken

into consideration all these aspects while considering the claim of pre-emption of respondent Nos. 4 to 10, but he has also failed to take into consideration the aforesaid aspects, though he has dismissed the pre-emption cases on merits. The respondent District Collector and the respondent Divisional Commissioner, being the appellate authority and revisional authority respectively, have not taken pains for examining these vital issues involved in the pre-emption proceedings between the parties with respect to the vended lands by two sale deeds of the year 1994.

20. For the reasons recorded above, this Court is of the considered opinion that pre-emption claims raised on behalf of the respondent Nos. 4 to 10 u/s 16(3) of the Land Ceiling Act itself were not maintainable before the respondent D.C.L.R. Therefore, the order dated 14.7.2009 (Annexures-2 and 2/1), the appellate order dated 1.7.2010 (Annexures-3 and 3/1) and the impugned revisional order dated 20.3.2012 (Annexure-6) all are hereby set aside. The preemption case No. 5 of 2008-09 and preemption case No. 6 of 2008-09 filed by respondent Nos. 4 to 10 with respect to the vended lands are hereby dismissed.

21. In the result, the writ petition succeeds and is hereby allowed. However, the parties are left to bear their own costs. Interlocutory Application No. 4375 of 2012 stands accordingly disposed of.

