
(1996) 09 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 319 of 1996

Ramdeo Sharma and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

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

Citation : (1996) 2 PLJR 694

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Gajendra Kumar Jha, for the Appellant; B.P. Verma, Sandeep Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the Petitioner has prayed for issuance of an appropriate writ for quashing the order dated 29th November, 1995 passed by the learned Additional Member, Board of Revenue, in Case No. 96 of 1995 by which he has allowed the revision application filed by the Respondent 2nd Set and set aside the order dated 2nd May, 1995 of the learned Collector, Begusarai, in Ceiling Appeal No. 1 of 1993 as well as the order of the learned Sub-divisional Officer dated 28th December, 1992 passed in Pre-emption Case No. 22 of 1982-83 by which both the Courts below rejected the pre-emption application filed by the Respondent 2nd set.

2. The facts of the case lie in a very narrow compass. The Petitioner Ramdeo Sharma purchased 1 Katha 8 dhurs of land from Nageshwar Singh through registered sale-deed dated 12th May, 1982. Another sale-deed was executed in favour of Rajo Sharma, Arun Sharma and Pradeep Sharma for 1 Katha 7 Dhurs of land. Similarly, Anr. sale-deed was executed in favour of Ramautar Sharma in respect of 1 Katha 8 dhurs of land from Nageshwar Singh. Baleshwar Sharma also purchased 2 Kathas of land through a sale-deed and Babu Sharma, Arjun

Sharma, Govind Sharma and Papu Sharma purchased 1 Katha 7 dhurs of land through a registered sale-deed dated 30th June 1982 from Nageshwar Singh. After the said purchase, the respective purchasers came in possession of the lands and these Petitioners purchased the lands for construction of their houses. It was alleged that two persons have already constructed their houses and are residing with their family members.

3. Petitioners' further case was that the pre-emptor/Respondent 2nd set filed an application for pre-emption before the learned Deputy Collector, Land Reforms, Manjhaul u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be referred to as the "said Act") by depositing Rs. 25,000/- and he filed a single application for re-conveyance of the entire lands which were admittedly purchased by the Petitioners through five separate sale-deeds with separate areas. On the basis of the said application, Pre-emption case No. 22 of 1982-83 was instituted and the learned Sub-divisional Officer, after hearing the parties, by order dated 28th December, 1992, rejected the pre-emption application filed by the Respondent 2nd set on the ground that, although the lands were transferred through five sale-deeds, only one pre-emption application was filed. A copy of the said order is Annexure-2 to the writ petition. The writ petition further discloses the facts that during the pendency of the pre-emption case, the Sub-divisional Officer on the request of the pre-emptor, appointed a Pleader Commissioner who submitted his report to the effect that the two writ Petitioners, namely, Ramautar Sharma and Ramdeo Sharma were residing over the said land with their family members after constructing their houses.

4. Aggrieved by the said order, of the learned Sub-divisional Officer, the pre-emptor filed an appeal before the learned Collector, Begusarai, bearing Ceiling Appeal No. 1 of 1993 which was dismissed by the learned Collector in terms of the order dated 2nd May, 1995, a copy whereof is Annexure-3 to the writ petition. The pre-emptor Respondent preferred a revision Case No. 96 of 1995, and the learned Additional Member, Board of Revenue, after hearing the parties, by his order dated 29th January 1995 allowed the revision application and set aside the orders passed by the Sub-divisional Officer and the appellate authority. Hence, this writ petition.

5. A counter affidavit was filed on behalf of private Respondent No. 5 (pre-emptor) stating, inter alia, that admittedly the entire disputed lands were purchased by the Petitioners through five different sale-deeds in order to defeat the provisions of Section 16(3) of the said Act. The Petitioners are members of a joint Hindu Mitakshara Family and they purchased the lands in dispute for the benefit of the joint family, from Respondent No. 6 Nageshwar Singh who was paid Rs. 25,000/- being the entire consideration money by Ramdeo Sharma, the Karta of the family and who is Petitioner No. 1 in this case. It was denied that the Petitioners had purchased the lands for constructing their houses and some of the Petitioners, in fact, constructed their houses and are also residing therein

with their family members. It was further stated that the fact that the entire consideration money was received from Petitioner No. 1 was proved in the Courts below and the Petitioners failed to prove any sort of partition whatsoever. In those circumstances, Respondent No. 5 tried to justify the order passed by the learned Additional Member, Board of Revenue, which is impugned in this case.

6. The learned Counsel appearing on behalf of Petitioners vehemently argued that the order of the Additional Member Board of Revenue is illegal, erroneous in law and contrary to the facts available on the record. The learned Counsel submitted that the revisional authority totally misconstrued the concept of joint family and the joint family property. The learned Counsel submitted that the revisional authority further committed serious illegality in allowing the pre-emption application filed by the pre-emptor for reconveyance of the land sold to different persons by more than one sale-deed. Referring the report of the Pleader Commissioner, the learned Counsel submitted that in view of the fact that the Petitioners, after purchasing the lands by separate sale-deeds, made construction and are residing separately in their houses. The learned Counsel then submitted that the Sub-divisional Officer, Manjhaul rightly rejected the pre-emption application on the ground that one application was not maintainable claiming right of pre-emption against different persons in respect of different sale deeds.

7. The learned Counsel appearing for the contesting Respondents, in reply, has submitted that the Petitioners are not only the members of the Joint Hindu family but they purchased the land by different sale-deeds on the consideration paid jointly to the vendor. In that view of the matter, the learned Counsel submitted that claiming right of the pre-emption by the Respondents by filing one application was in accordance with law and such an application was not barred under any of the provisions of the said Act.

8. From the perusal of the order passed by revisional authority it appears that the revisional authority was impressed by the fact that there was no pleading on behalf of the Petitioners-purchasers that they were prejudiced in any manner by filing a single application. The revisional authority took the view that since the Petitioners are members of joint family and there was no evidence on record to show that there has been partition among the brothers, a single application was maintainable. The Additional Member, Board of Revenue proceeded on the basis that under the Hindu Law, the Hindu family is presumed to be joint unless separation is proved. According to the authority, since the Petitioners-purchasers failed to prove that there has been any prior separation and they ceased to be the members of Mitakshara Joint Family, they cannot succeed by making self-serving statement without producing clinching and convincing legal evidence to satisfy the Court on the point of partition.

9. The revisional authority, in my opinion, has not taken the correct approach of law in the matter of deciding the right of pre-emption conferred u/s 16(3) of the said Act. There is no dispute that one application for pre-emption was filed for

reconveyance of five different sale deeds executed by the vendor in favour of different persons. The Petitioners have claimed to have acquired the land under separate sale-deeds for their own benefit and not for the benefit of the joint family. The Petitioners totally denied the jointness of the family which was evident from the report of the Commissioner to the effect that some of the Petitioners constructed their separate houses. The revisional authority was in error of law in holding that any property purchased by any member of the family shall be a joint family property. It is well settled that even if in the state of jointness, one of the members of the family possesses separate property, it shall be his exclusive property. Article 222 of the Mulla's Principles of Hindu Law (13th Edition) reads as under,

A Hindu, even if he be joint, may possess separate property. Such property belongs exclusively to him. No other member of the coparcenary, not even his male issue, acquires any interest in it by birth. He may sell it, or he may make a gift of it or bequeath it by will, to any person he likes. It is not liable to partition and on his death intestate, it passes by succession to his heirs, and not by survivorship to the surviving coparceners.

10. A similar question arose in the case of Saryug Mishra v. Kumari Devi reported in 1977 PLJR 290 where a Division Bench of this Court taking into consideration Article 222 of the Mulla's Principles of Hindu Law and the relevant facts observed as under:

In these writ applications, the Petitioners have not been able to conclusively prove by reference to the three sale deeds in question that the acquisition was made by the Respondents for the benefit of the joint family. So, the contention of learned Counsel for the Respondents that the sale deeds should be accepted at their face value and it must be held that the acquisition were made by the Respondents in their individual capacity for their own benefits appears to be plausible.

10. The learned Member, Board of Revenue further failed to appreciate the law that the right of pre-emption is a weak right and it can be defeated by any legal means. Merely because the Petitioners were not prejudiced by one application for pre-emption filed by the contesting Respondents, it cannot be held to be maintainable under the law.

11. In the facts of this case, I am of the opinion that the order of the revisional authority is not in accordance with law. The Sub-divisional Officer and the appellate authority have rightly held that in absence of conclusive evidence available on record, the application for pre-emption was not maintainable.

12. In the result, this writ application is allowed, the impugned order dated 29th November, 1995 passed by the Additional Member, Board of Revenue is quashed and that of the Sub-divisional Officer and the appellate authority are hereby confirmed. However, there shall be no order as to costs.