

(1992) 11 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1010 of 1980

Ramsaran Mahto and others

APPELLANT

Vs

Additional Member, Board of Revenue, Bihar, Patna and
others

RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16, 16(3)
Transfer of Property Act, 1882 — Section 54

Citation : (1992) 11 PAT CK 0010

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : S.C. Ghose, Ramnandan Prasad Sinha and Bipin Bihari Sinha, for the
Appellant; Braj Kishore Prasad Sinha and Mr. Jagdhar Prasad for State, for the
Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This writ application arises out of a proceeding u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short, "the Act"). Respondent no. 4 sold lands of plot nos. 3131/1, 3131/2, 3131/3 and 3136 in one compact block to respondent nos. 5 to 10 on 13.4.77. The registration of the sale was completed on 9.5.77. The petitioners filed the application claiming right of pre-emption u/s 16 (3) of the Act on the ground that they hold a land, namely, plot no. 3131/5 as also plot no. 3135 adjacent to the vended land by virtue of registered sale deed dated 6.1.77 i.e. prior to the impugned sale dated 13.4.77 from respondent no. 4 whereas the purchasers are neither adjacent raiyats nor co-sharers. The claim was resisted by the purchasers on the ground that on 18.11.76 respondent no. 4 had entered into an agreement for sale of the same very plot, namely, 3131/5 in their favour and for the enforcement of the said agreement they had filed as suit for specific performance, being Title Suit No. 164 of 1977. Pre-emption was allowed by the

Deputy Collector Land Reforms and on appeal by the Additional Collector. The Board of Revenue in revision set aside those orders and rejected the claim for pre-emption on the ground that the aforesaid suit had been decreed on 20.12.79. The petitioners preferred appeal against that decree being First Appeal No. 40 of 1980. They also filed this writ petition. The writ petition was tagged with the first appeal. The appeal was finally allowed on 14.7.84. The judgment and decree of the trial court were set aside and the suit was remanded to the trial court for fresh decision. The hearing of this writ petition was kept pending awaiting the decision of the civil court in the suit.

2. When the hearing of this case was taken up, it was stated on behalf of the petitioners that the suit has since been dismissed on 12.9.86. The contesting respondents i.e. the purchasers stated that they have preferred appeal being First Appeal No. 615 of 1986 in this Court and, therefore, hearing of this case should be deferred and/or this case be tagged with the said appeal as was done on the previous occasion. For the reasons mentioned hereinafter, I do not think such a course would be either legal or correct.

3. The relevant part of sub-section (3) of Section 16 of the Act reads as follows :--

(3) (i) When any transfer of land is made after the commencement of this 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 the 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 the said deed :

The above provision confers a right upon a co-sharer of the transferor or raiyat holding land adjacent to the transferred land to make application claiming reconveyance of the land on the same terms and conditions by filing application within three months of the date of the registration of the transfer deed provided the transferee is neither a co-sharer nor an adjacent raiyat himself. Two conditions, amongst others, are necessary for claiming a right of pre-emption; that the applicant must be either a co-sharer or adjoining raiyat and that the transferee is neither a co-sharer nor an adjoining raiyat of transferred land.

4. The sheet-anchor of the respondents' claim is the baibeyana i.e. the agreement of sale of plot no. 3131/5 dated 18.11.76. Admittedly, de hors the said agreement, they were neither adjacent raiyats of the transferred land nor co-sharers of the transferor. The question for consideration is whether merely on the basis of that agreement and the suit for specific performance it can be said that they are raiyats holding the land adjoining the transferred land.

5. It is important to bear in mind that limitation of three months has been prescribed for making application which runs from the date of the registration of the document. A question arose in the case of *Rajkishore Singh v. Bhubneshwari*

Singh, : 1968 BLJR 33 as to whether the right of the applicant u/s 16 (3) could be defeated by a purchaser who became raiyat of adjoining land after expiry of period of three months. It was held by a Division Bench of this Court that once the right of pre-emption becomes complete under the said provision it cannot be defeated at the instance of another person who becomes a raiyat of the adjoining land after expiry of the period of three months from the date of transfer. It is true, as suggested by the Learned Counsel for the respondents, that right of pre-emption is a weak right which can be defeated by all legitimate means. It is also true, as was held by a Full Bench of this Court in Ramchandra Srivastava v. Prasidh Narain Singh: AIR 1971 Patna 302, that if the purchaser acquires land adjoining the transferred land subsequently but within the period of limitation, the right of pre-emption will stand defeated because such a right must subsist not only on the date of execution and registration of the document but also on the date of the application of pre-emption. However, such a subsequent acquisition must be within a period of three months from the date of registration of the transfer deed.

6. Section 54, Transfer of Property Act lays down that a contract for the sale of immovable property does not of itself create any interest in the property. Thus, the right of respondents on the basis of the aforesaid agreement with respect to plot no. 3131/5 was inchoate, yet to crystallise into a legal right in the land. If a pre-emptor on the basis of a similar agreement of sale cannot claim pre-emption, it is difficult to see how a purchaser can do so. The right of pre-emption may be weak but, nonetheless, it is statutory. Such a statutory right can be defeated only within the framework of the statute. If the purchaser does not "hold" land adjoining the transferred land on the date of registration of the document or application within the period of limitation, such a right cannot be defeated merely because he has a chance of "holding" the land in future on the basis of the decree for specific performance, which may or may not be passed at all.

7. Such being the legal position and the suit in question having already been dismissed by the civil court, keeping this case pending awaiting the decision of the first appeal will be wholly unwarranted in law and incorrect on facts. In the result, the order of the Board of Revenue dated 9.4.80 in Case No. 405 of 1978 contained in Annexure-11 to the writ petition is quashed. Resultantly, the order passed by the Additional Collector, Land Reforms, Nalanda dated 18.10.1978 in L.C. Appeal No. 8 of 1977-78 contained in Annexure-10 stands restored. In other words, the claim of the petitioners for pre-emption is upheld. This application is, accordingly, allowed but in the circumstances, without any order as to costs.