
(2013) 07 PAT CK 0102

In the Patna High Court

Case No : LPA No. 263 of 1997 in CWJC No. 8139 of 1989

Savitri Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(4)

Citation : (2013) 4 PLJR 360

Hon'ble Judges : S. Nayer Hussain, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Devendra Prasad Sinha and Ambika Bhagat, for the Appellant; S.K. Mazumdar and Gopal Jee, for the Respondent

Final Decision : Dismissed

Judgement

S. Nayer Hussain and Ahsanuddin Amanullah, JJ.—This Letters Patent Appeal was filed by the original appellant, who was respondent No. 4 in the writ petition bearing C.W.J.C. No. 8139 of 1989. During the pendency of this appeal, the original appellant, namely, Bausdeo Gope (c) Basudeo Yadav died and in his place the present appellants have been substituted vide order dated 22.12.1999. The aforesaid writ petition was filed by the purchaser, who is respondent No. 5 in the instant appeal, challenging order of the Board of Revenue as well as the order of Collector, by which the claim of pre-emptor, who was respondent No. 4 in the writ petition and the original appellant in this Letters Patent Appeal, was allowed.

2. The said writ petition bearing C.W.J.C. No. 8139 of 1989 was allowed by a learned Single Judge of this Court vide the impugned order dated 13.1.1997 holding that the claim of pre-emption cannot be allowed in view of the fact that the purchaser himself was an adjacent Raiyat of the land in question by way of an earlier purchase.

3. Against the said order the pre-emptor filed the instant Letters Patent Appeal,

which was heard by a Division Bench of this Court and vide order dated 10.11.2006 a Division Bench of this Court allowed the appeal and set aside the impugned order and dismissed the writ petition.

4. However, since the aforesaid order of the Division Bench of this Court was passed without hearing respondent No. 5 (purchaser), who was also the writ petitioner, the said Division Bench of this Court recalled the said order dated 10.11.2006 passed in the said Letters Patent Appeal vide order dated 28.5.2007 passed in M.J.C. No. 2847 of 2006. Thereafter, the matter has come before this Court for deciding afresh.

5. After hearing learned counsel for the parties and perusing the materials available on record, it appears to be undisputed that the land in question is 33 decimals out of plot No. 897, khata No. 177, situated in Village-Bhuinka in the district of Munger (now Lakhisarai), which was purchased by the writ petitioner, who is respondent No. 5 in this letters patent appeal from the admitted owner, namely, respondent No. 6 of this appeal for valid considerations by a registered sale deed dated 21.8.1985. The claim of the purchaser is that on the same day he purchased adjacent plot No. 879, measuring 65 decimals of khata No. 175 by another sale deed from the same respondent.

6. Against the purchase of 33 decimals of plot No. 897 vide sale deed dated 21.8.1985, the pre-emptor-original appellant filed Ceiling Case No. 2 of 1985 u/s 16(4) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, but the same was rejected by the Deputy Collector, Land Reforms, Lakhisarai vide order dated 6.8.1986. Against the aforesaid order, the pre-emptor filed Appeal No. 69 of 1986-87, which was allowed by the Additional Collector on 20.2.1989 and when the purchaser challenged the said order before the Board of Revenue vide Revision No. 148 of 1989, the Board of Revenue rejected the revision vide order dated 17.8.1989. Thereafter, the aforesaid writ petition was filed by the purchaser.

7. The claim of the pre-emptor is twofold; firstly that he was the owner of the land adjacent to the land in question purchased by the purchaser and secondly that other land purchased by the purchaser was not adjacent to the land in question and hence the purchaser cannot defeat the right of pre-emption of the original appellant.

8. The law in this regard is well-settled that if the purchaser is himself an adjacent Raiyat to the land purchased, the claim of pre-emption by any other adjacent Raiyat shall not be maintainable. Hence, it has to be seen whether the pre-emptor had been able to dislodge the claim of the purchaser when he was himself an adjacent Raiyat.

9. A perusal of the sale deed in question with regard to 33 decimals of plot No. 897 dated 21.8.1985 shows the purchaser to be Raiyat of the adjacent east land, whereas, the other sale deed of the purchaser with respect to 65 decimals of plot No. 879 dated 21.8.1985 shows the purchaser to be the owner of the land of plot

No. 897 adjacent west to it.

10. On the other hand, although the pre-emptor had claimed that there was a river in between the two lands of the purchaser, but he has miserably failed to prove the same by any material whatsoever. This aspect of the matter has been fully considered by the learned Single Judge in his impugned order dated 13.1.1997.

11. In the said circumstances, this Court has no option, but to hold that the purchaser was the owner of the adjacent land also and hence the claim of preemption raised by the original appellant cannot be legally entertained. Accordingly, this letters patent appeal is dismissed and the impugned order of the learned Single Judge is hereby affirmed.