
(2011) 05 PAT CK 0120
In the Patna High Court
Case No : C.W.J.C. No. 14884 of 2005

Shanti Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(1), 16(3), 18

Citation : (2011) 59 BLJR 3305 : (2011) 3 PLJR 196

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Petitioner before this Court is subsequent transferee of the land covered by subject sale deed by way of a deed of gift executed in her favour by the purchaser prior to institution of proceeding u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short "the Act"). She raises a grievance with respect to the resolution dated 30.9.2005 (Annexure-1) passed by Respondent Board of Revenue in Case No. 126 of 2002 whereby the revision preferred by pre-emptor/Respondent No. 2 was allowed.

2. Background facts, in nutshell, are as under:

Respondent No. 4 executed a sale deed in respect of 7 kathas 6 dhurs of land appertaining to Khata No. 481, Plot No. 2980 situated/located in Village-Ramgarha, P.S.-Garkha in the district of Saran. The said document was registered on 5.4.1995. Respondent No. 2 (pre-emptor) filed a proceeding u/s 16(3) of the Act on 16.5.1995 claiming reconveyance of the vended lands covered by the said sale deed giving rise to L.C. Case No. 11 of 1995-96. The claim of pre-emption was made on the ground/ plea that the land of the pre-emptor lay adjacent/adjoining north as well as south of the vended plots/lands. Respondent No. 3 appeared in the said proceeding and took the plea that prior to

institution of the said proceeding, the lands covered by the subject sale deed was/were gifted in favour of the Petitioner by a deed which was registered on 13.2.1995. The donee (Petitioner) also appeared in the said proceeding and raised the said issue. On a consideration of the matter, the donee was impleaded as party Respondent. However, No. rejoinder to the petition filed by the donee before the Respondent-D.C.L.R. was filed on behalf of the pre-emptor. On a consideration of the materials on record, Respondent-D.C.L.R. by a proceeding dated 3.7.1998 (Annexure-4) dismissed the claim of pre-emption raised by the pre-emptor/ Respondent No. 2. Aggrieved over the aforesaid order, pre-emptor/ Respondent No. 2 filed appeal being Appeal No. 22 of 1998. Respondent-Addl. Collector by an order dated 10.7.2000 (Annexure-5) remitted the case back to the Respondent D.C.L.R. for holding local inspection and deciding the matter afresh. On remand, the matter was again taken up and by an order dated 10.2.2011 (Annexure-6), the Respondent-D.C.L.R. allowed the application filed u/s 16(3) of the Act. Aggrieved by the aforesaid order, the writ Petitioner together with the donor/original purchaser filed appeal being Appeal No. 10 of 2001. The matter was considered at great length by the appellate authority whereafter by a proceeding dated 6.6.2002 (Annexure-7), the appeal was allowed concluding therein that the deed of gift was executed and registered prior to institution of the proceeding u/s 16(3) of the Act and the same was a valid document. It was also found that the pre-emptor was not the adjoining raiyat of the vended land. Aggrieved over the aforesaid order dated 6.6.2002, the pre-emptor/Respondent No. 2 filed revision before the Board of Revenue which was allowed by the impugned resolution dated 30.9.2005 (Annexure-1) passaging filing of the present case.

3. Learned Counsel for the Petitioner, drawing attention of the Court to the provisions contained in Sections 16(1) and 18 of the Act, submits that No. claim of preemption would lie in respect of conveyance by registered instrument donating the land. He relies on a Division Bench judgment of this Court rendered in the case of Smt. Priyambada Devi v. Additional Member since reported in 1985 P.L.J.R. 662. It is next submitted that the issue as to whether the deed of gift was sham, farzi and/or inoperative could not have been gone into by the authorities/Courts under the Act in view of the fact that there is/was No. pleading to that effect made or taken by the pre-emptor before the Respondent-D.C.L.R. It is submitted that although on an application preferred by writ Petitioner, she was allowed to intervene in the proceeding but No. rejoinder thereto was filed claiming the said deed as farzi, sham and/or inoperative. Learned Counsel, referring to the original application preferred by the pre-emptor (Annexure-2) submits that in the said application also, No. such claim/issue was pleaded/raised.

4. No. one has appeared on behalf of Respondent No. 2/pre-emptor to resist the present application although said Respondent has appeared in the present proceeding through a counsel. There is No. counter affidavit on record filed on behalf of the Respondent No. 2.

5. The issue is simple. Whether a claim of reconveyance u/s 16(3) of the Act can be made/raised in respect of a deed of gift which was brought into existence prior to lodgment of proceeding under the Act? Admittedly, the principle of lis pendens would not be applicable, in the facts and circumstances of the case. It appears from the materials on record that No. such issue with regard to the inoperativeness of said deed of gift was made/pleaded before the Court. The Apex Court dealing with circumstances akin to this case in the case of Gokul Mahto v. State of Bihar [1999(2) P.L.J.R. S.C. 73] held as under in paragraphs 8 and 9 which read as under:

8. Pleadings of the petition before the primary authority do not make any allegation that the gift was benami or a sham document. There is No. doubt some discussion before the appellate authority as to whether the document is benami or sham, but in our opinion, it was not necessary for the said authorities to go into this question as there was No. pleading before the primary authority.

9 We are of the view that the Board of Revenue and the High Court were right in disallowing the application of the Appellant for pre-emption on the ground that Sub-clause (3) of Section 16 does not apply to transfers by way of gift. The appeal is accordingly dismissed. In the circumstances, there will be No. order as to costs.

While dealing with a case gift, a Division Bench of this Court in the case of Smt. Priyambada Devi (supra) found and held as under in paragraph 7:

As already stated above the second transfer deed in the present case is not a sale deed but a deed of gift and on its registration it would be an operative document from the date of execution, which is a date prior to the filing of the pre-emption application. That being so, the Explanation to Section 16(1) of the Act is attracted. Under it a deed of gift has been excluded and would not amount to "transact" for the purpose of Section 16 of the Act. The Explanation to Section 16(1) of the Act reads thus:

For the purposes of this section "transfer" does not include inheritance, bequest or gift.

In view of this exclusion under the Explanation aforesaid, a deed of gift is excluded from the purview of Section 16(3) of the Act. If, however, such a deed of gift would have been challenged as a sham and farzi transaction and the authority under the Act would have found the allegation to be correct, then for all practical purposes the said deed of gift would be a document non est in the eye of law and the pre-emption application would in such a case proceed against the original purchaser. But here unfortunately for the pre-emptor he has not alleged the sham and farzi nature of the deed of gift. It has, therefore, to be taken as a fact that the said document if executed and registered in conformity with law would be a valid document and for such a document the legislature has mandated exclusion of the applicability of Section 16(3) of the Act. This conclusion does not require support of any decision as the section itself is clear

and explicit. In view of this exclusion it has to be held that the order of the Land Reforms Deputy Collector and the appellate as also the revisional orders are all illegal and liable to be set aside. Those authorities should have held that the deed of gift not having been challenged as a sham and farzi document, the preemption application u/s 16(3) of the Act was not maintainable....

6. Considering the ratio laid down in those two cases, this Court is of the considered view that No. such claim/grievance was raised in respect of the deed of gift executed in favour of Petitioner prior to lodgment of proceeding by Respondent No. 2 u/s 16(3) of the Act. Alienation by gift is excluded from the purview of such proceeding.

7. For all these reasons, this Court allows the writ application. The impugned resolution dated 30.9.2005 (Annexure-1) passed in Case No. 126 of 2002 is quashed and set aside.

8. There shall be No. order as to costs.