

(1983) 05 PAT CK 0012

In the Patna High Court

Case No : Civil writ Jurisdiction Case No. 4548 of 1978.

Sheo Kumar Yadav and others

APPELLANT

Vs

The Additional Member, Board of Revenue, Bihar, and Others

RESPONDENT

Date of Decision : 09-05-1983

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 47

Citation : (1983) PLJR 639

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Advocate : Umeshwar Pd. and Onkar Nath Sinha, for the Appellant; Parmeshwar Pd. Sinha, Anant Prakash Sahay and Upendra Prasad Sinha, for the Respondent

Judgement

Prem Shanker Sahay, J.—The petitioner have moved this Court for quashing the order of the Additional Member, Board of Revenue, dated 7.7.1978, Annexure 1, the order of the Collector, Saharsa, dated 13.9.1976, Annexure 2, and the order of the Land Reforms Deputy Collector dated 3.5.1976, Annexure 3, passed u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Act). The petitioners purchased plots no. 4284 and 4285 having areas Of one bigha and eight dhurs on 31.12.1973 and it was duly registered no 6.8.1974. The petitioners also exchanged plot no. 4288, which is adjacent east to plot no. 4285, from the owner on 17. 10.1974 and it was duly registered on 9.11. 1974. On 4.11.1974 the respondent no. 4 filed an application u/s 16(3) of the Act for pre-emption claiming to be the adjoining raiyat being owners of plot no. 4283 on which a case was registered. The petitioners filed their objections saying that by virtue of exchange of plot no. 4288 they had also acquired the status of a boundary tenant and, therefore, the application filed by respondent no. 4 was not maintainable. The learned Land Reforms Deputy Collector rejected the contention

of the petitioners by 1 is order as contained in Annexure 3 and allowed the application for pre-emption. As against the aforesaid order the petitioners preferred appeal and the learned Collector, Saharsa, held that the deed was registered on 9.11. 1974 after the application u/s 16 (3) of the Act was filed by respondent no. 4 and in that view of the matter, they having (sic) acquired the status of a boundary tenant (sic) the date of filing of the application, the (sic) of pre-emption could not be defeated and he, therefore, dismissed the appeal. The petitioners preferred a revision and on similar ground the learned Additional Member, Board of Revenue, rejected the contention of the petitioners by his order as contained in Annexure 1. Being aggrieved by the aforesaid orders the petitioners have filed this application under Article 226 of the Constitution of India.

2. Counter affidavit has been filed by respondent no. 4 in which it is stated that it has been wrongly stated that the exchange of plot no. 4288 was made by the petitioners on 17.10.1974 and even if it was done subsequently and registered on 9.11.1974 it was with the sole object of defeating the right of pre-emption of respondent no. 4. Mr. Umeshwar Prasad, learned counsel appearing on behalf of the petitioners, has submitted that the courts below have committed an error of law in holding that the petition is had not acquired the status of an adjoining raiyat on the date when the application for pre-emption was filed on 4.11.1974. He has further submitted that the document for the exchange was executed on 17.10.1974 but it was actually registered on 9.11.1974 and it will date back to the date of the execution (17.10.1974) and, therefore, the petitioners were adjoining raiyat on 4.11.1974 of the two plots in question and they were entitled to resist the application filed by respondent no. 4, having equal status. Sri Parmeshwar Sinha, appearing on behalf of respondent no. 4, has, on the other hand, submitted that the courts below have taken the correct view of law as enunciated by the Supreme Court and by our own High Court in different judgments which I will presently discuss.

3. It has been held by a Full Bench decision of our own High Court in the case of Ramchandra Prasad Shrivastava v. Prasad Narain Singh (1970 P.L. Journal Report 579) that the right of preemption can be defeated if before the date of application, the transferee himself acquires the same status in relation to the transferred land. In the case of Radha Krishna Lakshmi Narain Toshniwal v. Sridhar Ramchandra Alshi (A.I.R. 1960 Supreme Court 1368) it has been held that in order to defeat the law of pre-emption by any legitimate means is not a fraud on the part of either the vendor or vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means. Thus, in view of the aforesaid decisions if the petitioners exchanged plot no. 4288 in order to become an adjoining raiyat of the purchased plots their action cannot be said to be illegal rather it must be held that it was permissible under the law. But the question for consideration is that on what date the petitioners became the adjoining raiyat; on 17.10.1974 or on 9.11.1974, the date on which the registration was made, and the application for pre-emption was filed on 4.11.1974. A similar point came

for consideration before the Supreme Court in the case of Hira Lal Agrawal v. Rampadarath Singh and ors.. (A.I.R. 1969 Supreme Court 244) where the question arose when the application u/s 16(3) of the Act could be filed by the pre-emptor and whether the time will run from the date of the execution of the document or from the date of the registration. It was held that the time had to be commuted from the date of actual registration and any application filed prior to that will be premature. It was further argued, in that case, that even if the registration was done subsequent to the execution it will relate back to the date of execution and it has been held that it cannot be argued on the basis of Section 47 of the Indian Registration Act that once registration is effected the title under the sale deed relates back to the date of execution of the sale deed so as not to render the application presented prior to the completion of registration as premature. In the Case of Ram Saran Lal v. Most. Domini Kuer (A.I.R. 1961 Supreme Court 1747) it has been held that the demand for pre-emption was actually made before registration of a document and, therefore, it was not valid. In Radha Krishna Lakshmi Narain's case (supra) it has also been held that a suit for pre-emption brought on the basis of an agreement is without any cause of action and there is no right for pre-emption which could be claimed. In the case of Bishan Singh v. Khagan Singh (A.I.R. 1958 Supreme Court 838) it has been held that the right being a weak right it can be defeated by all legitimate methods, such as the vendor attaining the status of a superior or equal right being substituted in his place. Thus, on a careful consideration of the point raised, in my opinion, the courts below have taken the correct view of law and though the petitioners has exchanged plot no. 4288 on 17.10.1974 it was actually registered on 9.11.1974 and prior to that the application for pre-emption was filed on 4.11.1974 and on that date the petitioners cannot be held to be on the boundary of the two plots in question. The application, therefore, fails. But in the circumstances of the case, there will be no order as to costs.