

(1972) 12 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1420 of 1970

Sheo Nath Singh

APPELLANT

Vs

K. Abraham and Others

RESPONDENT

Date of Decision : 05-12-1972

Acts Referred:

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

Citation : AIR 1973 Patna 242

Hon'ble Judges : Shiveshwar Prasad Sinha, J; S.N.P. Singh, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and Raghib Ahsan, for the Appellant; K.P. Verma, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N.P. Singh, J.—This application under Articles 226 and 227 of the Constitution of India 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 (hereinafter to be called "the Act").

2. Plot No. 1048 appertaining to Khata No. 77, situate in village Karbasia, police station Sahar, district Shahabad, belonged to one Ramnath Singh, brother of the petitioner Sheonath Singh. Plot No. 1047 of Khata No. 78, which is situated adjacent south to plot No. 1948 belonged to the petitioner. By a deed of exchange dated the 1st of August, 1966, Ramnath Singh transferred plot No. 1048 to Bhairo Singh and Dudnath Singh (respondents 4 and 5 respectively) in exchange for plot No. 1042. The petitioner thereupon filed an application u/s 16 (3) of the Act before the Deputy Collector in charge Land Reforms for the transfer of plot No. 1048 to him on the terms and conditions contained in the deed of exchange. An objection was taken on behalf of the respondents that the petition was not maintainable as the provisions of the Act were not applicable to exchange of land. The Deputy Collector in charge Land Reforms overruled the

objection and held that the provisions of the Act were applicable to a transfer by exchange. He accordingly directed that the petitioner be put in possession of plot No. 1048 having an area of 0.27 acre. A copy of the order of the Deputy Collector in charge Land Reforms dated the 30th of November, 1968, has been made Annexure "I" to the writ application. Being aggrieved by the laid order of the Deputy Collector in charge Land Reforms, respondent Nos. 4 and 5 filed an appeal before the Subdivisional Magistrate, Arrah, and Collector under the Act. The learned Subdivisional Magistrate held that the provisions of the Act did not apply to the transfer by exchange. Accordingly he allowed the appeal and set aside the order of the Deputy Collector in charge Land Reforms, Sadar, Arrah. A copy of the order of the Subdivisional Magistrate, Arrah and Collector under the Act, dated the 25th of June, 1969, has been made Annexure "2" to the writ application. Being aggrieved, the petitioner filed a revisional application before the Board of Revenue u/s 32 of the Act. The Board of Revenue agreed with the view of the Subdivisional Magistrate and held that the transfer by exchange has been excluded from the purview of Section 16 (3) (a) of the Act. The petitioner has, therefore, filed the writ application for quashing the order of the Subdivisional Magistrate and Collector under the Act (Annexure 2) and the order of the Board of Revenue dated the 17th of December, 1969 (Annexure 3).

3. It is not disputed that there was only one document of exchange dated the 1st of August, 1966, by which Ramnath Singh transferred plot No. 1048 to Bhairo Singh and Dudhnath Singh in exchange for plot No. 1042. It appears from the order of the Board of Revenue that the consideration money which was mentioned in the deed was Rs. 500/-. The learned Additional Member, Board of Revenue, has taken the view that the definition of "transfer" as given in Section 5 of the Transfer of Property Act is no doubt wide enough to include transfer by exchange. But the word "transfer" used in Section 16 (3) (i) of the Act means only transfer and not exchange, lease, mortgage or settlement. The view which the Board has taken appears to be correct for the reasons which I am going to presently state. Section 16 of the Act is headed "Restriction on Future Acquisition by Transfer". Section 16 (1) of the Act read as under:

"No person shall, after the commencement of this Act, either by himself or through any other persons, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area."

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

It will be noticed that the acquisition of land by exchange, lease, mortgage, agreement or settlement have been used as distinct acquisitions and not covered by the acquisition of land by transfer. It will further be noticed that the acquisition of land by inheritance, bequest or gift has been excluded from the definition of the word "transfer". In Sub-section (2) of Section 16 also transactions of land by exchange, lease, mortgage, agreement or settlement

have been used as distinct transactions from the transaction of transfer simpliciter. Sub-section (3) (i) of Section 16 of the Act reads as under:

"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;

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period."

The word "transfer" in Sub-section (3) (i) has to be read in the same sense as the word "transfer" has been used in Sub-sections (1) and (2) of Section 16 of the Act. A plain reading of Sub-section (3) (i) of Section 16 shows that the only transaction of land which is covered by that sub-section is "transfer of land" as distinguished from "exchange of land", "lease of land", "mortgage of land" and "agreement or settlement of land". It is, therefore, clear that the intention of the Legislature was to exclude the other transactions, such as exchange, lease, mortgage, agreement or settlement from the ambit of Sub-section (3) of Section 16. The expression "purchase money" used in the proviso to Sub-section (3) (i) of Section 16 also indicates that the transaction to which Sub-section (3) (i) of Section 16 is applicable is a transaction of sale simpliciter and not any other transactions, referred to above, including the transaction of exchange of land. It may be mentioned here that in the proviso to Section 16 (3) (ii) also the expression "purchase money" has been used.

4. For the foregoing reasons I hold that the provisions of Sub-section (3) of Section 16 of the Act do not apply to a transaction relating to exchange of land. I therefore, do not find any error of law in the orders of the Subdivisional Magistrate and the Additional Member, Board of Revenue (Annexures 2 and 3 respectively) justifying interference by this Court.

5. This application is accordingly dismissed; but, in the circumstances, there will be no order as to costs.

S.P. Sinha, J.

6. I agree.