(2004) 04 PAT CK 0063

In the Patna High Court

Case No : C.W.J.C No. 4645 of 1997(P)

Shyamapado Gorain APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0063

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The petitioner has challenged the order dated 6.2.1997 (Annexure-1) passed by the Member, Board of Revenue, Bihar, whereby the learned Member, Board of Revenue in exercise of his revisional jurisdiction allowed the revision application filed by Jagarnath Gorain and set aside the order passed by the appellate Court.

2. The petitioner by filing an application u/s 16(3) of the Land Ceiling Act before the L.R.D.C., Dhanbad claiming preemption on the ground of being adjoining Raiyat of the Plot No. 1225 of khata No. 10 situated in Mauza Deoli, P.S. Govindpur District-Dhanbad which was purchased by the respondent No. 5 and 6 from the respondent No. 7 by registered deed dated 19.2.1992", of which Registration was completed on 28.7.1993. The claim of the petitioner was that the said land was agricultural land as the petitioner is an adjoining Raiyat of the land in question and, therefore, he has a claim of preemption over the same.

3. Whereas the case of the opposite parties was that the land in question was homestead land and was not an agricultural land and, therefore, the provisions of Section 16(3) of the Land Ceiling Act was not applicable. The L.R.D.C. rejected the application filed by the petitioner by order dated 15.6.1994 (Annexure-2), holding that on sport inspection, it was found that a pakka house was standing on the aforesaid land and in the said house a shop was also being run by the respondents. Electrical connection was found in the said house. A boundary wall to 6 height was also found in between plot No. 1225 and 1223 which was constructed by the petitioner. The L.R.D.C. further found that the nature of the

land as recorded in the Cadestral Survey as "gharbari" Raiyati Gora II has not changed. In view of the aforesaid finding, the L.R.D.C. held that the land in question was homestead land and not an agricultural land, therefore, the claim of the petitioner for preemption was not maintainable.

4. However, in appeal filed by the petitioner against the said order of the L.R.D.C. Dhanbad, the Additional Collector by his order dated 18.12.1995, set aside the order of the L.R.D.G. holding that at the time, the land was purchased by the respondent No. 5 and 6 i.e. on 19.12.1992, the land in question was ''parti'' and there was no house standing on the said plot and the purchasers wanted to change the nature of the land by making a construction. The learned appellate Court also gave finding that the petitioner was an adjoining Raiyat. Thereafter a revision was filed before the Member, Board of Revenue, Patna by the respondent Nos. 5 and 6. The learned Member, Board of Revenue by his impugned order dated--6.2.1997 allowed the Revision application and set aside the order of the appellate Court and restored the order of the L.R.D.C. which has been challenged by the petitioner in the present writ application.

5. From perusal of the order of the Member, Board of Revenue as contained in Annexure-1, it appears that he affirmed the finding of fact arrived at by the D.C.L.R. It appears that the Member, Board of Revenue further after relying on the decision in the case of Hari Narayan Pandey Vs. State of Bihar and Others held that even in a case, where an application for preemption is filed for a land which is although recorded as agricultural land but has been purchased for making construction and in fact construction is made then the application for preemption is liable to be rejected.

6. Mr. Jai Prakash, learned counsel for the petitioner submitted that the Member, Board of Revenue without examining the various documents filed by the petitioner and without considering his claim has wrongly allowed the Revision application and, therefore, his order is wholly illegal.

7. Nothing has been pointed out on behalf of the petitioner so a to arrive at a different conclusion on the findings on facts arrived at by D.C.L.R. which was affirmed by the Member, Board of Revenue, Patna. It is settled law that this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot sit as an appellate Court and reverse the findings of fact arrived at by the subordinate Courts, unless it is established that the findings are perverse and not based on the materials on record.

8. On the contrary, I find that the materials on records were well discussed by the L.R.D.C. as well as by the Member, Board of Revenue and, therefore, the findings on facts arrived at by the aforesaid authorities do not require any interference by this Court.

9. Accordingly. I find no reason to interfere with the order and thus this application is dismissed. No. costs.