(2007) 05 PAT CK 0096

In the Patna High Court

Case No : C.W.J.C. No. 6617 of 1989

Siya Devi and Others — APPELLANT

Vs

The Addl. Member, Board of Revenue and Others — RESPONDENT

Date of Decision : 01-05-2007

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

Citation : (2007) 2 BLJR 2361 : (2007) PLJR 162 Supp

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Yogendra Mishra and Mithlesh Kumar Khara, for the Appellant; Vishwanath Pd. Sinha. Sr. Advocate, Anil Kumar Singh and Sanjay Kumar Singh for Respondents 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition arises from a pre-emption proceeding u/s 16(3) of the Bihar Land Ceiling Act.

2. The petitioner is the pre-emptor and the claim of pre-emption relates to a sale made in the year 1975.

3. The first round of the proceeding ended with an order of remand to the first authority, the D.C.L.R. In the second round, though the D.C.L.R. upheld the petitioner''s claim of pre-emption, the appellate and the revisional authorities, namely the Additional Collector and the Board of Revenue held against him. This writ petition, therefore, seeks to challenge the orders passed by the Additional Member, Board of Revenue and the Additional Collector, Samastipur.

4. The subject matter of dispute is a piece of land 1 Katha 10 dhurs in area that forms part of R.S. Plot No. 1338 with a much larger area, situated at Village Saidpur Zahid, P.S. Tajpur in the district of Samastipur. The admitted position is that R.S. Plot No. 1338 is made by the Cadestral Survey Plot Nos. 870 and 871.

It is also not in dispute that in the cadestral survey records and the revisional survey record of rights the plot(s) in question were/ was recorded in the name of the ancestor of the two brothers Dhanraj Rai and Gaya Rai sons of Bodhan Rai. It is also admitted that during the consolidation operation plot No. 1338 was / jointly recorded in the names of Dhanraj Rai and Gaya Rai.

5. On 22.1.1975 Gaya Rai executed a sale deed in respect of 1 Katha 10 dhurs out of the aforesaid plot in favour of respondents 4 and 5. On completion of the registration of the sale deed the vendor''s brother Dhanraj Rai filed a petition u/s 16(3) of the Act before the D.C.L.R. Samastipur claiming pre-emption on the ground that he was a co-sharer and a boundry raiyat. Apparently his claim on the basis of being a co-sharer and adjoining raiyat was irresistible. On behalf of the purchasers, therefore, the plea was taken that the disputed land was not agricultural in nature and it was, therefore, not amenable to the claim of pre-emption. The D.C.L.R. rejected the plea raised by the purchasers and allowed the claim of pre-emption raised by Dhanraj Rai. In appeal the Additional Collector set aside the order passed by the D.C.L.R. and remanded the matter with a direction to the D.C.L.R. to find out the true nature of the transferred land. The pre-emptor Dhanraj Rai took the matter in revision before the Board of Revenue but the Board did not interfere with the order of remand.

6. On remand the D.C.L.R. once again allowed the claim of pre-emption raised by Dhanraj Rai by his order dated 31.7.1979 in Suit No. Ic 6/9/75-76 62/76-77. The purchasers preferred an appeal before the Additional Collector, Land Ceiling, Samastipur before whom it was registered as Land Ceiling Appeal No. 93/81/39/87. The Additional Collector allowed the appeal by order dated 29.9.1988 and set aside the order of the D.C.L.R. The Additional Collector found and held that the piece of land was situate by the side of the National Highway and it was used for commercial purposes. Hence, it was not covered by the definition of land within the meaning of Section 2(f) of the Land Ceiling Act and it was not amenable to a claim of pre-emption u/s 16(3) of the Act. The pre-emptor took the matter before the Board of Revenue in Case No. 377 of 1988. The revision was dismissed by resolution dated 30.5.1985 passed by the Additional Member of the Board who affirmed the finding of the Additional Collector.

7. Mr. Yogendra Mishra, counsel appearing on behalf of the petitioner strongly assailed the finding that the disputed piece of land was used for commercial purposes and it was, therefore, not subject to the claim of pre-emption. Mr. Mishra pointed out that in the revisional survey record of rights plot No. 1338 was described as agricultural land and the transferred land was given the same description in the sale deed executed by Gaya Rai in favour of the purchasers. Mr. Mishra submitted that in view of the entry in the record of rights and the description given in the sale deed there was no scope to hold that the nature of the disputed land was anything other than agricultural.

8. It is indeed true that the entry in the record of rights and the description given

in the sale deed are normally strong evidences with regard to the nature of the land. But those are by no means conclusive and it can always be shown that after the survey operation the nature of the land had undergone a change and the description given in the sale deed was also incorrect and erroneous. The Additional Collector has discussed the issue in detail and in his order at page 38 of the brief has referred to a number of documents on the basis of which he came to hold and find that the piece of land was used for commercial purposes.

9. As noted above, it is the admitted position that Plot No. 1338 is situate by the side of the National Highway. It also appears that the pre-emptor had his house on a part of the plot. From the materials produced before the revenue authorities it further appears that following the sale the purchasers constructed a house on the disputed land which was being used for commercial purposes and not for any agriculture purposes.

10. On hearing Mr. Mishra, counsel for the petitioner and Mr. Vishwanath Prasad Sinha, Sr. Advocate representing the purchaser and on going through the impugned order I am satisfied that the Addl. Collector and the Board of Revenue have arrived at the finding that the land was not agricultural in nature and it was used for commercial purposes on a proper consideration of the relevant materials. The dispute thus stands concluded by a finding of fact that does not warrant any interference in a writ proceeding.

This writ petition is accordingly dismissed but with no order as to costs.

