(2005) 02 PAT CK 0033

In the Patna High Court

Case No : CWJC. No. 14016 of 2001

Siyawati Devi — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

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

Citation : (2005) 3 PLJR 352

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Nand Kishore Singh, for the Appellant; Uday Bhan Singh No. 3 and Mr. Alam Ansari for the State, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioner, counsel for respondent No. 5 and the counsel appearing for the State. The petitioner is the purchaser and has filed this application for quashing the orders dated 21.11.2000 (Annexure-1), order dated 20.10.1998 (Annexure-2) and order dated 3.1.1997 (Annexure-3) whereby the application filed by respondent No. 5 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, has been upheld by the D.C.L.R. the Additional Collector and Additional Member Board of Revenue.

2. Petitioner purchased 0.03 decimal of land of Khata No. 300 Plot No. 742 situated in village Chitarbigha in the district" of Nalanda from Sharda Devi, (respondent No. 7). The sale deed was executed on 27.4.1993 and its registration was complete on 17.11.1995. Much after expiry of the statutory period of 90 days, the respondent No. 5 filed an application u/s 16(3) of the Act on 26.2.1996. Certified copy of the sale deed and the Chalan showing payment of consideration money was obtained on 27.4.1993. From the order-sheets of Ceiling Case No. 11 of 1995-96 it transpires that on 26.2.1996 the case was

registered and the Chalan with L.C. Form 13 was deposited on 28.2.1996. It is also apparent that the application was filed without there being any limitation application for condoning the delay and without impleading transferor as party which is essential for filing an application u/s 16(3) of the Act.

3. Counsel appearing for the petitioner has submitted that since compliance of the provisions of Rule 19 is mandatory the application u/s 16(3) filed by respondent No. 5 should have been rejected by the D.C.L.R. at the initial stage itself but when the objection was filed by the petitioner indicating the defects in the pre-emption application filed by respondent No. 5 the D.C.L.R. permitted him to remove the defects. The transferor was impleaded as party on 10.1.1996. Limitation petition was filed on 14.11.1996 and even after filing of the limitation petition no order was passed for condoning the delay in filing the pre-emption application. Finally when the order was passed by the D.C.L.R. on 3.1.1997, allowing the pre-emption application filed by respondent No. 5 he condoned the delay which is not permissible in the eye of law. For non-compliance of the mandatory provision of Rule 19 the petitioner has placed reliance on the decision reported in 1989 P.L.J.R. 283 and 1985 P.L.J.R. NOC 42.

4. Counsel appearing for respondent No. 5 has submitted that due to illness of respondent No. 5 the application could not be filed in time. Subsequently the transferor was impleaded as party and limitation petition was also filed. His submission is that the D.C.L.R. has rightly allowed the preemption application with a finding that the respondent No. 5 was an adjacent raiyat and as such entitled for reconveyance of the vended land in his favour.

5. Without considering the question whether respondent No. 5 was adjacent raiyat or not, from the facts of the case, it transpires that the application filed by respondent No. 5 u/s 16(3) of the Act should have been rejected by the D.C.L.R. at the initial stage as the same has been filed without complying the provisions of Rule 19 which is mandatory. It has been decided by this Court that if Rule 19 is not complied, the pre-emption application must be rejected as not maintainable. The right of pre-emption being a weak right it can be rejected for any legitimate reason. Non-compliance of Rule 19 is a very legitimate and genuine reason for rejecting the application for pre-emption. In the facts and. circumstances of the case, the order dated 21.11.2000 (Annexure-1), the order dated 20.10.98 (Annexure-2) and the order dated 3.1.1997 (Annexure-3) passed by the Additional Member Board of Revenue, the Additional Collector and the D.C.L.R. respectively are hereby quashed and this application is allowed.

