
(2011) 05 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 767 of 2006

Smt. Akabari Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

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

Citation : (2011) 4 PLJR 195

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kishore K. Mandal, J.—Petitioner before this Court is purchaser. She is aggrieved by the resolution of the Board of Revenue dated 15.11.2005 passed in Board Revision Case No. 179 of 2005 (Ghanshyam Jha vs. Akawari Devi) whereby the revision application preferred by respondent No. 5/pre-emptor was allowed and the orders passed by respondent D.C.L.R. and the Collector were set aside.

2. Background facts in a nutshell are as under:

On 19.11.2001, respondent No. 6 executed and registered a deed of absolute sale in favour of the writ petitioner in respect of 61/4 dhurs of land appertaining to Khata No. 251, R.S. Plot No. 390 situated in Mauza-Ojhaul in the district of Darbhanga. Respondent No. 5 instituted a proceeding on 24.12.2001 seeking his right of pre-emption in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short the Act) which gave rise to Ceiling Case No. 42 of 2001-02. On notice, the petitioner appeared and filed rejoinder and resisted the claim inter alia on the ground that pre-emptor has not been shown as adjoining raiyat in the subject sale deed (Annexure-1), a small tract of land for high consideration amount was purchased for the construction of residential premises not connected with agriculture and the purchaser himself has obtained status of adjoining raiyat by virtue of a sale

made in her favour on 22.12.2001 whereafter the proceeding was lodged. Respondent D.C.L.R. on a consideration of the matter accepted the submission of the petitioner and rejected the claim by an order dated 25.7.2002 (Annexure-4). Dissatisfied with the aforesaid order, respondent No. 5 preferred appeal being Appeal Case No. 19/2002-03. Respondent appellate authority on reappraisal of the materials on record concurred with the findings recorded by the respondent D.C.L.R. and thus rejected the appeal by an order dated 13.7.2005 (Annexure-5). Aggrieved over the said order, the respondent No. 5 filed revision which was allowed by resolution dated 15.11.2005 (Annexure-6).

3. Learned counsel for the petitioner submitted that the pre-emptor is neither a co-sharer nor adjoining raiyat of the vended land as would appear from the subject sale deed dated 19.11.2001 (Annexure-1). It is submitted that before instituting the claim by respondent No. 5, the purchaser herself acquired the status of adjoining raiyat of the vended land by reason of sale deed registered on 22.12.2001 (Annexure-2) in respect of Plot No. 203 corresponding to New Plot No. 397. It is submitted that if the purchaser himself/ herself has become adjoining raiyat before institution of the proceeding then the right of pre-emption would fail. He relies on a judgment of this Court since reported in 1994 B.L.J. 22 (Shakuntala Devi vs. The State of Bihar & Ors). It is submitted that the said principle has been accepted in 1968 B.L.J.R. 33 (Rajkishore Singh vs. Bhubneshwari Singh & Ors.) by negating the claim of the pre-emptor of having purchased the land which lay adjoining to the, vended land after expiry of 90 days. Referring to Annexure-1, which is subject sale deed, it is submitted that a very small tract (less than 1 katha) has been purchased for high consideration amount and the boundary of the vended land would show that a road constructed by Public Works Department lay on the western side of the vended land. Relying on Annexure-7, it is submitted that the pre-emptor himself purchased part of the Cadastral Survey Plot No. 203 on 30.6.2001 wherein the vended plot has been shown fit for residential purposes. It is submitted that the respondent Revisional authority erred in disturbing the concurrent findings recorded by the two Courts below merely on perusal of a map of the village.

4. Nobody has appeared on behalf of respondent No. 5 to oppose the application. Learned counsel for the State points out that the claim of pre-emption has been allowed observing that the status of land cannot be decided in the said proceeding. It is submitted that two other issues of facts decided by the two Courts below have not been touched in the order impugned.

5. Law is settled. The claim of preemption has been treated as a clog on the legal right of a person to vend or purchase. Such preferential treatment can be given if the preemptor is able to demonstrate to the satisfaction of the authorities that he/she too has land adjoining to the vended land and his claim of preemption would augment the consolidation of land for the purpose of carrying out cultivation. In the present case, it appears from the materials on record as well as order(s) of the respondent D.C.L.R. (Annexure-4) and the Additional Collector

(Annexure-5) that petitioner herself became adjoining raiyat of the vended plot before lodging the claim by respondent No. 5 in terms of Section 16(3) of the Act. It further appears that respondent No. 5 in Annexure-7 has himself accepted the tract of land fit for residential purpose. There is no material on record to indicate that the land which is the subject matter of the proceeding is connected with agriculture or capable of used in connection with agriculture/cultivation.

6. This Court, on a consideration of the materials on record and on going through the orders of the authorities as contained in Annexures-4 and 5 is convinced that the pre-emptor (respondent No. 5) has no superior claim which can be enforced.

7. Accordingly, the application is allowed. The impugned resolution dated 15.11.2005 passed by Addl. Member, Board of Revenue in Revision Case No. 179 of 2005 is quashed and set aside.

8. There shall be no order as to costs.