
(2007) 05 PAT CK 0145
In the Patna High Court
Case No : CWJC No. 9371 of 1989

Smt. Ram Dulari Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

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

Citation : (2007) PLJR 380

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Bhanu Pratap Singh, for the Appellant; Deepak Kumar, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Bhanu Pratap Singh, Counsel for the petitioner. No one appears for the private contesting respondents. This writ petition arises from a pre-emption proceeding u/s 16(3) of the Bihar Land Ceiling Act. The petitioner before the Court is the purchaser and he has lost before all the three authorities under the Act.

2. The land forming the subject matter of the dispute is 1 bigha in area of plot No. 43 under Khata No. 22 in touzi No. 4990 under revenue thana No. 230 situate in village Khaira Narottam P.S. Barun in the district of Aurangabad.

3. Respondent No. 5 raised the claim of pre-emption in respect of the disputed land that was transferred in favour of the petitioner under a sale deed executed by respondent No.6 on 5.10.1987 (registered on 16.10.1987). The Deputy Collector Land Reforms found that respondent No.5 was in fact an adjoining raiyat of the disputed land and he accordingly allowed the claim by order, dated 12.4.1988 passed in Case No. 67/1987-88. The petitioner took the matter in appeal before the Additional Collector, Aurangabad in Case No. 21/88-89. The appeal was dismissed and the order of the Deputy Collector Land Reforms was

affirmed by order, dated 13.2.1989 passed by the Additional Collector. The revision filed by the petitioner before the Board of Revenue met with the same fate and it was dismissed by resolution, dated 19.7.1989 in Case No. 128 of 1989. The petitioner has finally come to this Court challenging the aforesaid three orders.

4. Mr. Singh submitted that transfer of the disputed land by respondent No. 6 in favour of respondent No.5 was not in the nature of sale and as a matter of fact it was part of an exchange of two equal pieces of land between the two parties but the authorities under the Act, however, failed to appreciate the real nature of the transaction and taking it as a case of sale, wrongly allowed the claim of preemption raised by respondent No.5. On 5.10.1987, both the petitioner and respondent No.6 executed deeds in favour of each other. The real intention of the parties was to make an exchange of their respective pieces of land but due to the incompetence and ignorance of the deed-writers, the transaction was formalized not under a single deed but by execution of two separate deeds which were labeled by the deed-writers as sale deeds and a notional consideration was also stated therein. Mr. Singh further submitted that nonetheless the real nature of the transaction would be evident from the following facts.

(i) Both the sale deeds were executed on the same date, 5.10.1987 and were registered on 16.10.87.

(ii) In both the sale deeds, the consideration money was stated to be Rs. 2,000/-.

(iii) In both the sale deeds, the area of the transferred land was exactly the same. Under the deed executed by the petitioner, a piece of land 62-1/2 decimals was transferred in favour of respondent No.6. While under the sale deed executed by her (giving rise to the pre-emption proceeding) the area of the transferred land in favour of the present petitioner was stated as 1 bigha which is equal to 62-1/2 decimals (one acre being equal to one bigha and 12 kathas).

5. From the aforesaid facts, it is plain and clear that though the consideration money was mentioned in both the sale deeds, as a matter of fact no money exchanged hands and the end result of the transaction was that equal areas of land were transferred by one in favour of the other (petitioner and respondent No. 6).

6. Mr. Singh further stated that it was quite erroneous to see the deed executed by respondent No. 5 in favour of the petitioner separately and not conjointly with the deed executed by the petitioner on the same date in her favour.

7. Copies of the two deeds were produced in Court and on perusal of the two deeds, I am also of the view that though described as sale deeds, they infact constitute a single transaction of exchange of lands between the two sides. That being the position, it is well settled that no claim of pre-emption could be raised in respect of the transfer.

8. On hearing Counsel for the petitioner and on going through the materials on

record, I am satisfied that the authorities under the Act, right from the Deputy Collector Land Reforms to the Board were in error in allowing the claim of pre-emption and the orders passed by them are untenable. All the three orders are accordingly set aside. In the result, this writ petition is allowed but with no order as to costs.