(2008) 08 PAT CK 0135

In the Patna High Court

Smt. Savitri Devi and Dina Nath Pathak — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Citation : (2008) 08 PAT CK 0135

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioners, State and the counsel for the private Respondents.

2. Petitioners in the three writ applications are the pre-emptors. They are assailing the order dated 30.8.2000 passed by the Member, Board of Revenue in Rohtas Revision Case Nos. 47, 48, 49 and 50 of 2000, Annexure-5 whereunder revision filed by the vendor, Respondent No. 5 has been allowed setting aside the order dated 18.1.2000, Annexure-7 thereby affirming the original order passed by the Deputy Collector, Land Reforms i.e. Collector under the Act dated 22.8.1998, Annexure-6 dismissing the preemption case.

3. Perusal of the three orders dated 30.8.2000, Annexure-5, 22.8.1998, Annexure-6 and 18.1.2000, Annexure-7 would indicate that Respondent No. 5 executed three sale deeds dated 22.5.1996 conveying the lands in question in favour of Respondent No. 6 which was registered on 30.9.1997. Petitioners filed pre-emption application under Sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 (hereinafter referred to as "the Act") against private Respondent Nos. 5 and 6 on 1911.1997 impugning the three sale deeds. Respondent No. 6 appeared in the pre-emption case on 1.12.1997 and thereafter filed a show cause reply asserting that pre-emption cases be dismissed for the reason that the three sale deed dated 22.5.1996 were the subject matter of Title Suit Nos. 523 and 529 of 1997 at the instance of Khursida Khatun, wife of Respondent No. 5 who claimed the subject matter of the three sale deed as her personal property acquired by means of oral gift from private Respondent No. 5 in lieu of Mehar which could not

have been transferred without her consent. In the title suits Khursida Khatun impleaded both the vendor Respondent No. 5 and the vendee Respondent No. 6 was a party defendant. Later the title suits with the consent of the parties were referred to the Lok Adalat constituted under the Legal Services Authorities Act, 1987. The Lok Adalat under judgment and decree dated 22.3.1998 decreed the suits and the three sale deeds were set aside. The Deputy Collector, Land Reforms relying on the judgment and decree passed by the Lok Adalat in the aforesaid two suits dismissed the pre-emption case holding that the sale deed in question on the basis of which the claim for pre-emption was laid having been set aside by the Lok Adalat constituted under the Legal Services Authorities Act, the claim of preemption also could not proceed and accordingly dismissed the same under order dated 22.8.1998, Annexure-6. After dismissal of the pre-emption case the pre-emptor filed appeal and the appellate authority having heard counsel for the parties under order dated 18.1.2000, Annexure-7, set aside the order of the learned Deputy Collector, Land Reforms dated 22.8.1998, Annexure-6 holding that the proceedings taken in the two title suits before the Lok Adalat appears to be a collusive one as the suit was filed on 15.12.1997 whereas the pre-emption case was filed on 19.11.1997 and after appearance of Respondent No. 6 in the pre-emption case on 1.12.1997 consent decree was obtained on 22.3.1998 only with a view to defeat the pre-emption case.

4. Against the order 18.1.2000, Annexure-7 the vendor filed revision before the Board of Revenue and the Board of Revenue having heard counsel for the parties, set aside the appellate order dated 18.1.2000, Annexure-7 under the impugned judgment dated 30.8.2000, Annexure-5 holding that once the sale deed itself stood set aside by the Civil Court of competent jurisdiction, the right to preemption on the basis of the same sale deed could not have been allowed.

5. Counsel for the petitioner has assailed the order passed by the Board of Revenue with reference to the provisions contained in Section 43 of the Act which is quoted hereinbelow:

Save and except as provided in this Act, no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Board of Revenue, the appellate authority or the Collector.

2) No order of the Board of Revenue, the appellate authority or the Collector made under this Act, shall be questioned in any Court.

with reference to the provisions quoted above it is submitted that once the pre-emption case was filed on 19.11.1997 Khursida Khatun ought not to have questioned the validity of the sale deeds by filing title suit on 15.12.1997 and she ought to have raised the question of her title over the lands in question before the authorities under the Act itself and as she has chosen to approach the Civil Court of competent jurisdiction without impleading the pre-emptor as a party in the suit, the order passed in the title suit cannot be a ground to defeat the pre-emption case. In this connection learned Counsel for the petitioners has placed reliance on a Division Bench judgment of this Court in the Case of Gujan Yadav and Another v. Sitaram Choudhary and Ors. Reported in 1973 BBCJ Part-IV, Page-260. With reference to the said judgment it was submitted that as per the scheme of the Act any question of title over the lands in question which is the subject matter of the preemption case should be raised before the revenue court itself and the parties including Khursida Khatun should have raised the question of title over the lands in question before the revenue authorities and should not have gone to the Civil Court of competent jurisdiction. In this connection reliance has been placed which is quoted hereinbelow:

In a civil court it would be open to the transferor to raise the same question because in that event Section 43 will not be a bar. If the civil court decides the matter in favour of the transferor, the entire proceeding u/s 16(3) and all the orders passed therein will be set at naught. It does not seem to be either obligatory or expedient to take the view as urged on behalf of the petitioners rather the scheme of the Act and the rules suggest that all relevant questions which can be raised either by the transferor by the transferee should be raised before and conclusively settled or dealt with by the revenue courts so that the jurisdiction of the civil courts may be barred.

6. Counsel for the private Respondents on the other hand has urged that reference to Section 43 of the Act as also to the judgment in the case of Gujan Yadav and Another v. Sitaram Choudhary and Ors. has no application to the facts of this case, according to him Khursida Khatun who filed Title Suit Nos. 523 and 529 of 1997 for declaring the sale deed dated 22.5.1996 as void ab initio was neither the vendor nor the vendee of the lands in question and in terms of the different provisions of the Act it is never incumbent upon her to have come to the revenue court for ventilating her grievance about the lands conveyed through the sale deeds. She was competent to move the Civil Court for setting aside the sale deed on the ground of being void ab initio and if she moved the Civil Court it was not in derogation of any of the provisions of the Act.

7. It is further submitted that the order passed by the revisional authority under the Act, which is the final court of facts dismissing the claim of pre-emption may not be interfered with by the Court in writ jurisdiction. Reference in this connection has been made to the case of Bishan Singh and Others Vs. Khazan Singh and Another, as also to the Full Bench judgment of this Court in the case of Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others, . Learned Counsel further submitted that the pre-emption being a week right, all legitimate means can be availed of to defeat the same. In this connection reliance has been placed to a judgment of the Supreme Court in the case of Bishan Singh and Others Vs. Khazan Singh and Another, as also to the Full Bench judgment of this Court in the case of Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others,

8. Having heard counsel for the parties as also having perused the pleadings filed

by them including the three orders passed by the court below, it is evident therefrom that the sale deeds in question were executed on 22.5.1996 whereafter pre-emption cases were filed on 19.11.1997 and after appearance of the vendee, Respondent No. 6 in the pre-emption case on 1.12.1997, Title Suit Nos. 523 and 529 of 1997 were filed on 15.12.1997 by Khursida Khatun who was neither the transferor nor the transferee in the sale deed absolutely unconnected with the sale transaction dated 22.5.1996 as also not a party in the preemption case it was her choice to either come to the revenue court or approach the Civil Court for ventilation of her grievances about the sale deeds and if she has chosen to approach the Civil Court and succeeded there and the sale deeds have been set aside then this Court cannot take any exception for such ventilation of her grievance before the Civil Court of competent jurisdiction even prior to the decision of the lis by the Collector under the Act. The sale deeds in question on the basis of which the pre-emption cases were filed itself stood set aside by a competent authority constituted under the Legal Services Authorities Act, 1987 the pre-emption cases had to be dismissed and was rightly dismissed by the Collector under the Act.

9. The appellate authority should not have interferered with the same but the order passed by the appellate authority having been set aside by the revisional authority. I do not see any illegality in the order passed by the Collector under the Act as also by the Member, Board of Revenue and the three writ applications are, accordingly dismissed.