

(1988) 05 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 3481 of 1982

Sona Devi and Others

APPELLANT

Vs

Paras Nath Singh and Others

RESPONDENT

Date of Decision : 04-05-1988

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3), 2, 2(f)
Registration Act, 1908 — Section 17, 47, 49

Citation : (1989) PLJR 301

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Vyas Muni Singh and Vidya Sagar, for the Appellant; Ram Nandan Prasad, S.C. IV with Ram Swarup Prasad, J.C, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This writ petition is directed against an order dated 7.8.1982 passed in Case No. 241 of 1981 by respondent no. 3 and as contained in Annexure 3 to the writ petition whereby and whereunder he reversed a judgment dated 5.5.1981 passed by the Additional Collector, Bhojpur at Arrah and the order dated 7.10.1980 passed by the respondent no. 5 in Case No. 34/79-80 as contained in Annexure 1 to the writ petition. The facts of the case lie in a very narrow compass.

2. The petitioners filed an application for pre-emption in terms of the provision of section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in respect of piece of land bearing plot no. 2486 appertaining to Khata no. 1015 measuring 15 decimals situate in village Dandiha, P.S. Koilwar in the district of Bhojpur. The said application was filed against the respondent no. 1 Sri Saileshwar Dutta Pathak who sold the aforementioned land in question to the said respondent.

3. By an order dated 7.10.1980 the said application for pre-emption was

dismissed by the respondent no. 5.

4. The petitioners being aggrieved by and dissatisfied with the said order preferred an appeal in the Court of Additional Collector, Bhojpur who allowed the said appeal by an order dated 5.5.1981. The said appellate order is contained in Annexure 2 to the writ petition.

5. Respondent no. 1 thereafter filed a revision application before the Member, Board of Revenue against the aforementioned order as contained in Annexure 2 to the writ petition which was registered as Case No. 241 of 1981. The said revision application was allowed by an order dated 7.8.82 passed by the respondent no. 3 and as contained in Annexure 3 to the writ petition.

6. From a perusal of the order as contained in Annexure 3 to the writ petition it appears that the same was dismissed inter alia on the ground that the purchaser was in possession of a plot bearing plot no. 2485 which is adjoining the disputed plot no. 2486. According to the respondent no. 1 although he purchased the said land by registered deed dated 16.1.1980 he came in possession thereof from 1967-68 itself. According to respondent no. 3, therefore the purchaser was also in possession of adjoining land.

7. Mr. Vyas Muni Singh the learned counsel for the petitioners, submitted that respondent no. 3 acted illegally and without jurisdiction, in passing the impugned order. He made this submission on the basis of Division Bench decision of this Court reported in AIR 1952 Patna 263 (Panchoo Sahu vs. Janki Mandal & ors). The submission of the learned counsel appears to be correct.

8. In Panchoo Sahus case this Court was considering the question as to whether the title in respect of the land which is the subject matter of a sale deed passes on the execution and registration of the documents or till full consideration in respect thereof is passed. It was held in the said case that the same depends upon the intention of the parties. However in view of the provision of section 17 and section 49 of the Registration Act it is absolutely clear that the title in respect of the land wherefor the deed was executed does not pass unto the purchaser unless or until a deed is executed and registered, if such a deed is compulsorily be registerable. In this connection reference may be made to Sheo Kumar Yadav & ors vs. The Additional Member Board of Revenue, Bihar reported in 1983 BBCJ 552:1983 PLJR 639 and a decision of Full Bench in Ram Chandra Prasad Shrivastava vs. Prasidh Nr. Singh, reported in 1979 PLJR 579. In Sheo Kumar Yadav's case it has been held as follows:--

It has been held by a Full Bench decision of our own High Court in the case of Ramchandra Prasad Shrivastava vs. Prasidh Narain Singh that the right of preemption can be defeated if before the date of application, the transferee himself acquires the same status in relation to the transferred land. In the case of Radha Krishna Lakshmi Narain Toshniwal vs. Sridhar Ramchandra Alshi it has been held that in order to defeat the Jaw of pre-emption by any legitimate means is not a fraud on the part of either the vendor or vendee and a person is

entitled to steer clear of the law of pre-emption by all lawful means. Thus, in view of the aforesaid decisions if the petitioners exchanged plot no. 4288 in order to become an adjoining raiyat of the purchased plots their action cannot be said to be illegal rather it must be held that it was permissible under the law. But the question for consideration is that on what date the petitioners became the adjoining raiyat; on 17.10.1974 or on 9.11.1974 the date on which the registration was made and the application for pre-emption was filed on 4.11.1974. A similar point came for consideration before the Supreme Court in the case of Hira Lal Agrawal vs Rampadharath Singh & ors where the question arose when the application u/s 16(3) of the Act could be filed by the pre-emptor and whether the time will run from the date of the execution of the document or from the date of the registration. It was held that the time had to be computed from the date of actual registration and any application filed prior to that will be premature. It was further argued in that case that even if the registration was done subsequent to the execution and it has been held that it cannot be argued on the basis of section 47 of the Indian Registration Act that once registration is effected the title under the sale deed relates back to the date of execution of the sale deed so as not to render the application presented prior to the completion of registration as premature. In the case of Ram Saran Lal vs. Most. Domini Kuer it has been held that the demand for pre-emption was actually made before registration of a document and, therefore it was not valid. In Radha Krishna Lakshmi's case (supra) it has also been held that a suit for pre-emption brought on the basis of an agreement is without any cause of action and there is no right for pre-emption which could be claimed. In the case of Bishan Singh vs. Khazan Singh it has been held that the right being a weak right it can be defeated by all legitimate methods, such as the vendor attaining the status of superior or equal right being substituted in his place. Thus on a careful consideration of the points raised, in my opinion, the courts below have taken the correct view of law and though the petitioners had exchanged plot no. 4288 on 17.10.1974 it was actually registered on 9.11.1974 and prior to that the application for pre-emption was filed on 4.11.1974 and on that date the petitioners cannot be held to be on the boundary of the two plots, in question.

9. In this view of the matter there cannot be any doubt that the purported sale deed dated 16.1.1980 in favour of the purchaser in respect of plot no. 2485 cannot be taken in aid for the purpose of defeating the claim of the petitioners. However the Member Board of Revenue has also allowed the revision application filed on behalf of the respondent no. 1 on the ground that the petitioners have not given description of the land in question in their application for pre-emption in L.C. Form No. 13. The Board of Revenue has relied upon a Division Bench decision of this Court in Ganesh Prasad vs. Jugeshwar Tewari & ors. reported in 1969 PLJR 284 in which it has been held as follows:--

Comparing the word "held" in the Form with the definition of the "land" in section 2 (f) , it would be noticed that "held" there would mean that the description of the land should be given as to whether it is used or capable of

being used for agricultural purposes. No such statement with regard to the piece of land in question was made by the respondent no. 1 in his application. He merely said that it was homestead. But this description did not fulfil the description given in the Explanation to Clause (f) of section 2 of the Act as on the face of the kebal the land was merely a piece of homestead land and not a land which fulfilled the description of "homestead" in the Explanation.

10. Learned counsel for the petitioner however has relied upon a decision of the Supreme Court in *Hiralal Agrawal & ors. vs. Rampadarath Singh & ors.*, reported in 1968 PLJR 68A. In the said decision it has been held that the object of Rule 19 of the Bihar Land Forms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules 1963 in prescribing that the application u/s 16(3) must be accompanied by a copy of the registered deed is directory in nature. It has been held therein that if there was sufficient compliance of Rule 19, the application for pre-emption cannot be dismissed. However, from a perusal of the order of respondent no. 5 as contained in Annexure 1 to the writ petition it appears that he proceeded on the basis that the land in question is Basgit in nature as there are residential houses in the said area. It further appears that he proceeded on the basis that in view of the entries made in the Khatian there are houses in question in the neighbourhood of the disputed land as such it was held that the land was Basgit in nature and not agricultural in nature. Respondent no. 3 also in his order as contained in Annexure 3 to the writ petition held as follows:--

In this case, the description of land has been left blank by the pre-emptor which means that it has not been specifically claimed that the land is fit for or is held for agriculture or horticulture. This being the case the decision of the Patna High Court vide 1969 PLJR 284 operates to the disadvantage to the pre-emptor.

11. In view of the fact that the petitioners have not described the nature of the land in question there has not been any substantial compliance of Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1968 and the L.C. Form No. 13, the order passed by the respondent no. 3 must be held to be correct.

In this view of the matter, the question as to whether the requirements of the provisions to state the nature of land as contained in the said provision whether is directory or mandatory became academic. It is now well settled that the right of pre-emption is a weak right. Reference in this connection may be made to *Mir Rafiq vs. Additional Member, Board of Revenue, Bihar & ors.*, reported in 1981 BBCJ page 83. In *Md. Yasin vs. Abdul Rauf & ors.*, reported in 1967 BLJR 49 a Division Bench has held as follows:--

The question then becomes a pure question of fact as to whether on the facts found above the Commissioner was justified in holding that the disputed land is out side the scope of the Act. Considering the smallness of the area (10 dhurs), its situation being just adjacent to a public road, and the fact that the other portions of the same plot 1269 are actually in use for non-agricultural purposes

and there is also a building standing within the disputed land, the Commissioner was justified in holding that the land is outside the scope of the Act. There is no finding to the effect that the building within the plot which has been recently repaired was actually in the occupation of the vendor for purpose of agriculture or horticulture or for the purpose of an orchard.

12. In this view of the matter, I am of the opinion that the petitioners have not made out a case so as to invoke the extraordinary jurisdiction of this Court in enforcing his right for pre-emption which as stated hereinbefore is a weak right.

13. In the facts of this case, therefore, and particularly in view of the fact that the respondent no. 1 had been in occupation of a house standing on plot no. 2485 and which is situated contiguous to the land in question, namely, plot no. 2486, I decline to exercise my discretionary power in favour of the petitioners. In the result this writ petition is dismissed but without any order as to costs.