

(1973) 01 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1365 of 1970

Sukhram Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-1973

Acts Referred:

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

Citation : AIR 1974 Patna 24

Hon'ble Judges : N.L. Untwalia, C.J.; Sarwar Ali, J

Bench : Division Bench

Advocate : Kailash Rai and Binod Kumar Rai, for the Appellant; K.K. Sinha, Shyam Sundar Sinha, V.K. Kantha and Prabhunath Ray and Govt. Pleader I, for the Respondent

Final Decision : Allowed

Judgement

1. One Mosammat Pachia executed a sale deed on 21st October, 1965 in favour of the petitioner transferring the lands comprised in various plots which were in different blocks. She transferred as many as 13 plots, 12 of which appertained to khata No. 15 and one plot appertained to khata No. 22 in village Akhtiarapur Pathera, police station Lalganj, district Vaishali (old district Muzaf-farpur). The registration of the sale deed was complete on 11-11-65. On 19-1-66 Rambaran Singh, respondent No. 5, and Jugeshwar Singh, respondent No. 6, filed a joint application u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter called the Act. The entire consideration money along with 10 per cent, compensation was deposited on 22-1-66. The petitioner resisted the application filed by respondent 5, inter alia, on the ground that a joint application by two claiming to be co-sharers and adjoining raiyats, one in some and the other in the other, was not maintainable. During the pendency of the application before the Subdivisional Officer, Hajipur, respondent No. 6 entered into a compromise with the petitioner and withdrew his application u/s 16 (3) of the Act. The Subdivisional Officer by his order dated

16-9-68 (Annexure 4) dismissed the application of Rambaran Singh on the ground that after the withdrawal of the application by Jugeshwar Singh, Rambaran was not shown to be the co-sharer or adjoining raiyat of all the pieces of the land transferred. Rambaran Singh went up in appeal. The Additional Collector dismissed the appeal. He did not agree with the view of the learned Sub-divisional Officer that because Rambaran was not a co-sharer and adjoining raiyat in all the lands transferred, he could not get pre-emption, but maintained the decision of the Subdivisional Officer on the ground that the money was deposited beyond 90 days of the transfer. Rambaran went up in revision before the Board of Revenue. It appears Mosammat Pachia died when the case was pending before the Subdivisional Officer. Rambaran added her three daughters who are respondents 7 to 9 in this writ application as opposite parties in the revision application filed before the Board. The Board has taken the view that since registration of the document was complete on 11-11-65 the money was deposited within 90 days of the starting point of limitation for the filing of the application u/s 16 (3) of the Act. The learned Additional Member, Board of Revenue, has allowed the revision and the pre-emption application of Rambaran on the ground that Rambaran was admittedly an adjoining raiyat in respect of five of the vended plots and he was, therefore, entitled to claim pre-emption. The subsequent withdrawal by Jugeshwar Singh could not affect his right. The petitioner has obtained a rule from this Court for the setting aside of the order of the Board of Revenue.

2. On the first point the learned Additional Member, Board of Revenue, is right. The deposit made was within 90 days of the starting point of limitation.

3. On the other two points the learned Additional Member, Board of Revenue, has committed obvious errors of law. The person who can claim pre-emption u/s 16 (3) of the Act must be a person who is either a co-sharer or an adjoining raiyat of all the pieces of land transferred. If he is not so, he cannot claim pre-emption. No apportionment is possible to give him pre-emption in respect of some of the vended plots. He must claim pre-emption and get it in respect of the entire transaction when he proves that he is a co-sharer or an adjoining raiyat of all the plots transferred. It will be going against the spirit and principle of law engrafted u/s 16 (3) of the Act to say that two persons can jointly claim pre-emption on the ground that one is a co-sharer or an adjoining raiyat of some of the plots transferred and the other is a co-sharer or an adjoining raiyat of the remaining plots transferred. If separately neither can claim pre-emption, it is wholly unreasonable to take the view that by joining hands both can claim pre-emption. If two or more persons want to join hands in the filing of an application u/s 16 (3) it is necessary for all the applicants to establish that all of them are either co-sharers or adjoining raiyats of all the vended plots, Apart from the question of withdrawal by Jugeshwar of his application u/s 16 (3) therefore the application as filed was not maintainable, as neither Rambaran and perhaps nor Jugeshwar was a co-sharer or adjoining raiyat of all the 13 plots transferred by Mosammat Pachia to the petitioner.

4. Even assuming that Jugeshwar was a co-sharer or adjoining raiyat of all the lands transferred (even though it appears he was not so) his application could be maintainable but then he withdrew his application. After his withdrawal it may well be that Rambaran could say that since he was a co-sharer and adjoining raiyat of all the plots transferred he was entitled to maintain and pursue the application filed u/s 16 (3) of the Act. It is not necessary in this case to express final opinion whether he could do so or not after the withdrawal from the case of Jugeshwar, but it is certain and clear that Rambaran himself not being a co-sharer or adjoining raivat of all the plots transferred, as he was an adjoining raiyat of only five plots transferred, he could not join in the application of Jugeshwar for claiming pre-emption of any portion of the land transferred nor could he maintain and proceed with his application u/s 16 (3) after withdrawal of Jugeshwar.

5. Learned counsel for respondent No. 5 submitted that it was his case that he was co-sharer and adjoining raiyat of all the 13 plots transferred. This submission did not stand scrutiny. It was not Rambaran's case. Here in the show cause petition filed by him he clearly admits that he holds lands of khatas 15 and 22 as adjoining raiyat and was entitled in law to file the application u/s 16 (3) of the Act. He does not claim to be a co-sharer nor does he say that the finding of the Subdivisional Officer or of the Board that he was not an adjoining raiyat of all the plots transferred is wrong. It is, therefore, clear that he had no right to file the application u/s 16 (3) of the Act, nor any right to proceed with it after the withdrawal of Jugeshwar.

6. In the result, this writ application is allowed. The order dated 23-5-70 (Annexure 7) of the Board of Revenue, Bihar, is quashed. In the circumstances, there will be no order for costs.