(2015) 07 PAT CK 0119

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7270 of 1994

Sumitra Devi and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 5
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : (2015) 07 PAT CK 0119

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Shobha Nath Jha, for the Appellant; B.P. Verma, S.C., Dhanendra Chaubey, Upendra Pd. II and Ashok Kr., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J—This writ application has been filed seeking quashing of the order dated 28.07.1994 passed by the learned Additional Member, Board of Revenue, Bihar in Civil Revision Case No. 253 of 1993, affirming an order of reversal dated 23.04.1993 passed by the Additional Collector, Arrah in Ceiling Appeal No. 155/88-89/3/86-87, against an order dated 1.04.1986 passed by the Deputy Collector, Land Reforms, Arrah passed in Ceiling Case No. 19/85-86. The Deputy Collector, Land Reforms, Arrah vide his order dated 01.04.1986 rejected the preemption application filed on behalf of the respondent 2nd set herein.

2. There is not much dispute about the facts.

3. One Mahavir Sharan Singh, husband of petitioner No. 1 and father of petitioners No. 2 to 8 had purchased 1.10 acre of land of Plot No. 1276 of Khata No. 623 of village-Dhamar from the respondent 3rd set through sale deed executed on 03.05.1985 and registered on 06.07.1985. In the said sale deed, respondent No. 5 (Sheo Narayan Singh), who is the pre-emptor, was shown as a

raiyat, holding land in eastern boundary of the vended land. The said Sheo Narayan Singh filed an application under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) before the Deputy Collector, Land Reforms, Arrah claiming his preferential right to purchase the said land on the ground of he being an adjoining raiyat. The purchaser was noticed by the Court of Deputy Collector, Land Reforms, Arrah pursuant to which he appeared and responding to the said notice, he took a plea that he had already executed a deed of gift in favour of his wife Sumitra Devi, who is petitioner No. 1 herein on 02.07.1985. He also took a plea that the said deed of gift was registered on 30.09.1985, much after filing of the pre-emption application. He accordingly took a plea before the Deputy Collector, Land Reforms, Arrah that no claim of pre-emption was maintainable, the land having already been gifted in favour of the said Sumitra Devi through gift deed dated 14.08.1985 registered on 30.09.1985.

4. From the pleadings in the writ application, I find that in order to contend that the transfer of land through sale deed dated 06.01.1985 in favour of Mahavir Sharan Singh was a valid transfer and therefore preemption application was maintainable, a plea has been taken that the transfer in favour of said Mahavir Sharan Singh was made after due permission from the Consolidation Officer as required under Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. These facts suggest that the permission from the Consolidation Officer for effecting transfer of land at the relevant point of time was required on their own showing of the Petitioners. So far as second transaction alleged to have taken place on 02.07.1985, whereby the deed of gift executed in favour of Sumitra Devi by the said Mahavir Sharan Singh is concerned, there is no such averment that permission was obtained from the competent authority under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. Learned counsel appearing on behalf of the petitioner has failed to point out on the basis of the pleadings in the writ application that before execution of the said gift deed dated 02.07.1985 or before its registration on 30.09.1985, any permission was taken from the Consolidation Officer. The transaction, if any, in such circumstance, prima facie, appears to be in violation of Section 5 of the Bihar Consolidation and Prevention of Fragmentation Act, 1956.

5. The Deputy Collector, Land Reforms, Arrah rejected the pre-emption application on the ground taken by the said Mahavir Sharan Singh that the second transfer by way of gift having been duly made on 02.07.1985, prior to filing of the pre-emption application, the said pre-emption application was not maintainable.

6. The respondents 2nd set preferred appeal against the order of the Deputy Collector, Land Reforms, Arrah giving rise to Ceiling Appeal No. 155/88-89/3/86-87. The Additional Collector, Bhojpur, the appellate authority set aside the order of the Deputy Collector, Land Reforms, Arrah holding that the pre-emptors were undisputedly adjoining raiyats, and the purchasers were neither co-

sharer nor adjoining raiyats. The Additional Collector, by his order dated 23.05.1993 held execution of deed of gift dated 02.07.1985 in favour of the wife of the vendee to be sham and farzee transaction, entered into with ulterior motive in order to defeat the right of the contesting respondents under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as to the Act).

7. The petitioners thereafter preferred revision application before the Board of Revenue giving rise to Revision Case No. 253 of 1993. The learned Additional Member, Board of Revenue finally decided the said Revision Case No. 253 of 1993 by his order dated 28.07.1994, affirming the order of the appellate authority and the view taken by the Appellate Authority that subsequent transaction by way of gift in favour of Sumitra Devi was a farzi and sham transaction only for the purpose of defeating the right of pre-emptor under Section 16(3) of the Act. I have perused the order of the Revisional Authority, which is detailed one. He has considered the rival contentions of the parties as well as the facts of the case. In my opinion, the learned Additional Member, Board of Revenue has rightly refused to interfere with the order of the Appellate Authority in facts and circumstances of the case.

8. I am of the view that apparently the gift deed, said to have been executed on 02.07.1985 was prepared in order to defeat the right of the pre-emptors under Section 16(3) of the Ceiling Act. Admittedly, the said gift deed was registered on 30.09.1985, much after filing of the pre-emption application. There is absence of sanction of the Consolidation Officer for the said transaction dated 02.07.1985, though such sanction was there, before transfer of land in favour of said Mahavir Sharan Singh through sale deed registered on 06.07.1985. The order passed by the Additional Member, Board of Revenue needs no interference in this application.

9. This application is accordingly dismissed.

10. There shall, however, be no order as to costs.

