
(1993) 04 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases Nos. 3347 and 3346 of 1994

Surendra Narain Yadav and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0008

Final Decision : Allowed

Judgement

S. B. SINHA, J.—Both these writ applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The fact of the matter lies in a very narrow compass.

3. By reason of two deeds of sale dated 10-9-1981 the petitioners purchased plot No. 240 appertaining to Khata No. 182 of Mouza Jagbati P.S. Manihari. The said plot No. 240 is in three parts the northern portion of the said plot measures 30 decimals and the southern portions thereof measures 1 acre, in between the aforesaid two lands lies 50 decimals of the land which was purchased by the uncle of the petitioner. The deeds in question were registered on 5-5-1982 in terms of Sections 61 and 62 of the Indian Registration Act. On 24-5-1982 the applications for pre-emption were filed by the respondent Nos. 5, 6, 7 and 8. The said pre-emption applications had been allowed by reason of the impugned orders dated 16-8-1982, 27-4-1983 and 17-5-1984 as contained in Annex-ures 1, 2 and 3 respectively.

4. The petitioners have contended that it has not correctly been held that the respondents are adjacent raiyats. It has further been submitted that plot No. 237 which was said to be belonging to the pre-emptor respondents by reason whereof the said respondents had been held to be adjacent raiyats were allotted to a different person while a chack was formed by the competent authorities under the provisions of Bihar Consolidation of Holdings and Prevention of

Fragmentation Act, 1956.

5. The final consolidation Khata and the village map were published on 28-3-1982. It was therefore, contended that a plot No. 237 was not allotted to the concerned respondents in the aforementioned consolidation proceedings, they ceased to be adjacent raiyats. It was further stated that in any event, the application for pre-emption was not maintainable in view of the fact that the respondent Nos. 7 and 8 who were minors filed their application through their elder brother and not through mother and natural guardian who was alive.

6. Mr. Pathak, the learned counsel appearing on behalf of the respondents, on the other hand, submitted that a concurrent finding of fact has been arrived at, to the effect that the petitioners are adjacent raiyats and thus this court in exercise of its jurisdiction under Article 227 of the Constitution of India should not interfere therewith.

7. The questions which, therefore, arise for consideration in this application are:--

(i) Whether in view of grant of a certificate in terms of Section 15 of the Bihar Consolidation of Holdings Act, the respondent Nos. 5 to 8 could be said to be an adjacent raiyats?

(ii) Whether the application filed by the respondents Nos. 6 and 7 through their elder brother was maintainable as their mother was alive?

8. Re-Question No. (i) From a perusal of Annexure-5 to the writ application it appears that Form No. XVII prepared in terms of Rule 18 of the Bihar Consolidation of Holding Rules 1988 it appears that a certificate of transfer had been granted in respect of plot Nos. 230, 233 and 294 in favour of Brahmdeo Yadav Gudar Yadav, Tanardan Yadav and Budhdeo Yadav son of Kalu Yadav.

9. Section 13 of the Consolidation Act envisages submission of consolidation scheme of the Director of Consolidation.

Section 14 provides that the Consolidation officer shall fix the date with effect from which the final consolidation scheme would come into force and shall notify the same in the unit in the prescribed manner and on or after the said date, the raiyat becomes entitled to possession of plots allotted to him.

10. Section 15 of the said Act enjoins the Consolidation Officer a duty to grant to every raiyat a certificate of transfer in the prescribed form in whose favour holding has been allotted pursuant to a consolidation scheme. In terms of the said provision such certificate shall be conclusive proof of the title of such raiyat and to such holding as may be specified in the certificate.

Section 16 provides that a confirmed scheme is to be treated as a finally published records of right.

11. It has not been disputed by the respondents in their counter affidavit that Chak Map and Khatian had been prepared. It is however submitted that the

subsequent event should not be taken into consideration by the courts, while determining a dispute in a proceeding u/s 16(3) of the said Act.

12. It is now well known in view of the decision of this Court in the case of Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others, that a right of pre-emption has to be determined on the date of the filing of the application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961.

In Ishaque Hajam v. Additional Member, Board of Revenue reported in 1985 PUR 323 : (AIR 1986 Patna 53) a learned single Judge of this court has held as follows at page 55; of AIR:--

"In my opinion, any order passed by a trial court will be subject to the decision in an appeal revision which have been provided by the, statute. The pre-emptor must hold the land until the pre-emption matter is finally decided by the ultimate court i.e. the Board of Revenue and that shall be the crucial date and not the date on which the order has been passed by the Land Reforms Deputy Collector. In Bhagwan Das (Dead) by Lrs. and Others Vs. Chet Ram, also it was held that the pre-emptor in order to succeed must have a right to pre-emption not only at the time of sale of the land by the landlord but also at the time of institution of the suit for pre-emption and also at the time of passing of the decree in the suit by the trial court. In other words his tenancy must remain intact and he must hold the land in his capacity as tenant till the date of the decree."

13. In Smt. Sunnania Devi v. The Additional Member, Board of Revenue, reported in 1981 BLJR 344 : (AIR 1981 Patna 273) it has been held as follows at page 274; of AIR:--

"The argument advanced by Mr. Ghose seems to be attractive and if I may say so, ingenious but, giving a deeper thought of the provision, I do not find it possible to accept the same. The Consolidation Act and the Ceiling Act is a later legislation being an Act of 1961. The legislature, therefore, must be deemed to be aware of the provisions contained in Section 5 of the Consolidation Act while enacting the provisions of Section 16(3). The non obstante clause contained in Section 39 of the Consolidation Act, referred to earlier, is to make the provisions of the Consolidation Act to prevail over any order Act or law to overcome any contrary provision contained therein with the sole and dominant purpose to achieve the objects of the consolidation namely for providing the consolidation of holdings and avoiding fragmentation. On reading the scheme of Section 16(3) of the Ceiling Act also it is obvious that the dominant object underlying the said provision is also consolidation of holdings and prevention of their fragmentation, as by the said provision the legislature intended that if a transferee of the land happened to be an outsider, then a co-sharer of the land or any adjacent raiyat, must be allowed to pre-empt the transactions so that fragmentation of holdings can be avoided. The underlying intention of the legislature under the provisions for pre-emption, therefore, is the same and similar to that as contained in the

Consolidation Act. The legislature, therefore, by providing Section 16(3) of the Ceiling Act did not make any inroad in the provisions of the Consolidation Act. Further, it wanted to achieve the same purpose and object as was intended under the Consolidation Act and to strengthen the scheme of Consolidation and to prevent fragmentation even after the scheme of consolidation was over."

The golden rule of harmonious construction of a statute is to see the purpose behind the enactment and the general rule the courts are to apply is to put that construction which best carries into effect the purpose of the statute under consideration. Even in a case where two enactments are inconsistent, obedience to each of them may be possible without doing any violence to the other. It was observed by Lord Langdale, M.R., in the Dean, etc. of Ely v. Bliss that if two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. The Supreme Court in the case of Sarwan Singh v. Kasturi (i) took a similar view. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous (sic) enactment. For one statute to cancel another they must be mutually destructive. Examining, therefore, the provisions of the two Acts under Consideration, I am of the view that there is not apparent conflict between the two provisions, rather the principle behind Section 16(3) of the Ceiling Act is to consolidate the scheme of the Consolidation Act, that is, to avoid fragmentation of a holding even after the consolidation work is over and completed by conferring a legal right in an adjacent raiyat or a co-sharer of the land to get it transferred in his favour from a third person or an outsider for maintaining the impactness of the block. The proviso to Section 4(C) by the amending Consolidation Act also lends support to such a Construction."

14. In Nagendra Narain v. Lakshman reported in 1984 BBJC 316, it has been held that as an order passed by a Consolidation authority cannot be challenged in the civil Court. The Execution Magistrate deciding a proceeding u/s 145 of the Cr.P.C, cannot ignore the order of such authorities.

15. The object of the said Act as also the Consolidation Act is inter alia to prevent fragmentation of the land.

It is now well known that a statute has to be interpreted and the rights of the parties flowing from the same must be determined keeping in view the object of the Act and the intent of the legislature.

16. A right of pre-emption is a very weak right. It is in fact a right of substitution.

17. In this view of the matter, the right to get one himself substituted in place of the vendee, the pre-emptor must fulfil all the conditions precedent prescribed therefor.

18. A right of pre-emption in terms of Section 16(3) of the Act is a statutory one.

Such a right can be exercised subject to the conditions that the pre-emptor complies with all the statutory directives, as a right of preemption can be exercised by a person who is either a co-sharer or an adjacent raiyat. It logically follows, that once he ceases to be a co-sharer or an adjacent raiyat a right of preemption ceases to exist. If an application for pre-emption is allowed despite the fact that the pre-emptor has ceased to be a co-sharer or a raiyat holding adjoining land, the very purport and object of the said Act namely to prevent fragmentation would be frustrated.

19. For the reasons aforementioned, there cannot be any doubt that as the respondents Nos. 5 to 8 ceased to be the adjacent raiyats even prior to the date of filing of the pre-emption application as by reason of Section 15 of the Act some other persons who had been allotted the said plot became the title holder in relation thereto whereas respondent Nos. 5 to 8 became title holder in relation to other plot in respect whereof they were also granted a certificate of transfer, they ceased to have any interest in the adjoining land and thus their application for pre-emption was not maintainable.

20. In this view of the scheme (sic) and purport of the said Act as also the Consolidation Act, there cannot be any doubt that the authorities under both the Acts, are "courts" with the meaning of Section 3 of the Indian Evidence Act.

In *Ram Sigashan Pathak Vs. K.P. Sinha, Deputy Director, Consolidation and Others*, it has been held that the consolidation Courts are courts within the meaning of Section 3 of the Evidence Act. This aspect of the matter has also been considered in *Kalika Kuar @ Kalika Singh Vs. The State of Bihar and others*, . It therefore, would be not correct to contend that the courts under the said Act or the Consolidation Act cannot take into consideration any subsequent event.

21. It is true that authorities under the said Act merely have the powers of the Civil Court with regard to the matter enumerated u/s 33 of the Act. However, in terms of Rule 49 of the Bihar Land Ceiling Rules 1963 the procedure to be followed by the appellate authority in disposing of the appeal under the said Act is the same as that of an appellate authority hearing an appeal from a decree passed in a suit.

In terms of the provisions contained in Order 41 of the CPC and appellate Court are vested with the same power of the trial court. Thus if an appellate court can take into consideration the subsequent event, in my opinion, there is no reason as to why the original court cannot do so.

22. From a perusal of Annexure-4 to the writ petition it appears that now a chack read intervenes between the transferred lands and the lands claimed by the respondent.

Mr. Pathak learned counsel appearing on behalf of the respondent, however, submitted that the said map does not bear the certificate of the Deputy Director

of Consolidation. Section 11(5) of the Consolidation Act does not provide that a certificate should be appended to the village map. The respondents have not annexed any other copy of the village map nor they have contended that the Annexure 4 is incorrect. As the respondents were the pre-emptors and thus it was for them to show that he is a holder of the land adjoining to the transfer land. Thus onus of proof was upon him which he had failed to discharge.

23. Each Court or the tribunal as the case may be, is entitled to grant such relief to which the parties thereto are entitled to in law and for that purpose the courts and the tribunal are entitled to take into consideration the subsequent events. Although the provisions of Order 7, Rule 7 of the CPC as such may not have any application in a proceeding u/s 16(3) of the Act but principles analogous thereto can be made applicable as the rights and obligations of the parties are to be determined by the tribunal whose decisions would be final and binding on the parties.

24. There cannot be any doubt that the rights of the parties are required to be decided ordinarily as on the date of the institution of the proceedings. But where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate, or that it is necessary to have the decision of the court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon a court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the final order is passed.

25. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, it has been held at page 1410:--

"It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis* (sic) has come to the court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to the events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure where no specific provision or fairplay (sic) is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances, repelling resort to that course in law or justice."

26. For the reasons aforementioned, I am of the view that no relief can be granted to the respondents Nos. 5 to 8 in the application for pre-emption.

27. Re-Question No. (II):-- In terms of Section 6 of the Hindu Minority and Guardianship Act in case of a minor boy and unmarried girl the father and

mother after his death is the natural guardian. In terms of Order 32, Rule 1 of the CPC provides, however, any minor can file a suit through his next friend who may, be, his elder brother. While filing an application u/s 16(3) of the said Act no transaction is being made in relation to a property of a minor nor the right of a minor in relation thereto would anyway be affected. Further such a question has to be raised at the earliest stage, Had such an objection being taken at the early stage of the proceeding it might have been possible for the court to direct that the application for pre-emption be taken off the file and in such an event, a proper application could have been filed. In this situation, in my opinion, the petitioner should not be permitted to raise the question, at this stage.

28. For the reasons aforementioned, these applications have to be allowed the orders dated 16-8-1982, 27-4-1983 and 17-5-1984 as contended in Annexures 1, 2 and 3 are quashed. But in the facts and circumstances of the case, there will be no order as to costs.