(2024) 01 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4631 Of 2002

Udit Mahto And Others — APPELLANT

Vs

State Of Jharkhand And Others — RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Section Order 21, Rule 34
Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act, 1961 — Section 16(3)

Citation : (2024) 01 JH CK 0031

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Arvind Kumar Lall, Mukul Kumar Singh, Atanu Banerjee

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. The petitioners are purchasers of land measuring 1.60 acres and are aggrieved by the order of pre-emption dated 12.06.2002 passed by the Board of Revenue (respondent no.2) in Board's Case No.49/2001.

2. Petitioners are the purchasers of the land measuring an area 1.60 acre at Village Henjala, P.S. Kuru, Thana No.64, District Ranchi vide registered sale deed dated 08.07.1974 from. Original Respondent No.5 filed pre-emption application, which was allowed in L.C Case No. 2/75-76 by holding that applicant was co-sharer as well as adjoining Raiyat to Respondent No.6.

3. Petitioners appeal was allowed in Pre-emption Appeal No. 392R 15/82-83 by order dated 30.01.1989. By the impugned order, the Board of Revenue, allowed the Pre-emption application in favour of original respondent no.5 against which the instant writ petition has been preferred.

4. The impugned order has been passed on the ground that transferor (respondent no.6) and the pre-emptor (respondent no.5) were cousins and were

co-sharers of the said land. The land was jointly recorded in the name of the petitioners and the respondent no.6 paid rent jointly to the State of Bihar.

5. The main contention of the petitioners is that the appellate Court of Additional Collector after considering the entire matter, passed a reasoned order holding that the partition had taken place between the transferor and the pre-emptor and they were in separate possession of the land. The appellate Court held that transferor was nephew of pre-emptor and the said land was sold without any objection of the pre-emptor. From this, it was established that there had been a previous family partition and therefore, they were not co-sharer. The second ground on which the pre-emption was not accepted by the appellate Court, was that land in question was constituted of five plots measuring an area 1.60 acres which cannot be considered to be one block to hold that the land of the pre-emptor was adjoining to it.

6. It is argued on behalf of petitioners that the pre-emptor has no need for the land, as will be evident from the supplementary affidavit filed on behalf of petitioners stating therein that from the same village, by seven sale deeds, different lands have been sold by the pre-emptor. It goes to show that the pre-emptor had no interest of getting the said land, whereas the Petitioners were in possession of it and had constructed their houses.

7. Learned counsel on behalf of pre-emptor (respondent no.5) submits that the learned appellate Court misdirected itself to hold that there had been previous partition and therefore, the pre-emptor and the transferors were not co-sharers. This reasoning is against the grain of law of pre-emption as there is no immediate requirement that there should be joint status of the family for invoking the law of pre-emption. The twin criteria for exercising such a right as laid down by the Hon’ble Supreme Court in Suresh Prasad Singh Versus Dulhin Phulkumari Devi, (2010) 6 SCC 441 Para 20 is that, the pre-emptor and transferor should be co-sharer and they should have adjoining land. Board of Revenue has rightly held that there was no registered partition to draw an interference regarding partition of shares between the parties. Lastly, it is submitted that as far as the financial status and poverty of the petitioners are concerned, it is a subject beyond consideration in a Pre-emptory Suit or proceeding drawn under the Ceiling Act. The findings recorded by the Appellate Court that the plots did not constitute one whole, was perverse without any basis. The Appellate Court did not considered the authority Abdul Gafur Versus Board of Revenue and Others, AIR 1984 PATNA 268 relied upon by the petitioners.

8. As far as the subsequent development is sought to be brought on record in the instant writ petition regarding transfer of land by the pre-emptor, it is submitted that most of these registered sale deeds are of the year 1992 to 2011 when the matter was pending before the Board of Revenue that most of the such deeds were executed during the pendency of the matter before the Board of Revenue. This was not brought to the notice of the Board of Revenue. Reliance is placed on

Shyam Sunder & Others Versus Ram Kumar & Another, (2001) 8 SCC 24, para 17, 18, 19 & 34.

9. In order to appreciate the rival submissions advanced on behalf of both the sides, it shall be desirable to extract the relevant provision of Bihar land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 which gives the right of pre-emption.

Sub-section (3) of Section 16 which is relevant here is quoted herein below:—

"(3) (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted from land and possession thereof shall be restored to the transferor and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under Clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed."

From the above provision, it is apparent that the precondition for exercise of preemptory right is that the pre-emptor should be either the co-sharer or raiyat of adjoining land. This determination is purely objective in nature. Furthermore, pre-emption under Section 16(3) of Ceiling Act is exclusively available for land for agricultural purpose. Furthermore, there has to be strict compliance of provisions to invoke right of pre-emption to defeat title acquired by someone on purchase.

10. In the present case, genealogy of the pre-emptor and transferor is not in dispute. Pre-emptor was the uncle of the transferor. Land appertained to Khewat No.2 which was recorded in the name of the pre-emptor and the father of the

transferor. Land Reform Deputy Collector has recorded a finding that both were co-sharers. It has also been held that Lands were contiguous on the basis of report of the circle officer with map drawn on spot inspection.

11. The finding of the appellate Court that the pre-emptor and the transferor were not co-sharers, is on the ground that pre-emptor had not raised any objection at the time of sale. Going by this analogy the appellate Court also held that there had been partition between them.

12. This Court is of the view that the reasoning of the appellate Court is without any legal basis. The genealogy of the parties is undisputed along with the entries in the record of rights, showing that pre-emptor and transferor were co-sharer. Whether there was a partition or not among the co-sharers is not germane for the determination of pre-emptory right under the Ceiling Act.

13. Findings of contiguity of the lands had been set aside without any basis by the Appellate Court.

14. The registered sale deeds executed by the pre-emptor brought on record by way of supplementary affidavit by the Petitioners (purchaser) are not relevant for the present purpose.

15. Board of Revenue has assigned cogent reasons in the revisional order while setting aside the order passed in appeal.

This Court does not find any infirmity in the impugned order.

Writ petition, accordingly, stands dismissed. Interlocutory Application, if any, is disposed of.