(2015) 06 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2263 of 1993

Umesh Prasad Sah and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 32
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 3

Citation : (2015) 06 PAT CK 0023

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Syed Firoz Raza and Sudhir Kumar Thakur, for the Appellant

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.

1. This is an application seeking quashing of the order dated 25.01.1993, passed by the Additional Member, Board of Revenue, Bihar, Patna (respondent No. 2), in Revision Case No. 563 of 1990 by which, while allowing the revision petition filed on behalf of the respondent No. 5, he has set aside the order dated 16.08.1990, passed by the Additional Collector, Purnea in Ceiling Appeal No. 43 of 1986-87, whereby, the Additional Collector had affirmed the orders of the Deputy Collector Land Reforms, passed in Case No. 57 of 1885-86 dated 10.04.1986/17.04.1986, granting respondent No. 5, the right of pre-emption 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'').

2. The dispute relates to transfer of land in favour of the petitioners through registered sale-deed, executed on 02.01.1985 and registered on 19.06.1985. The land, in dispute, admeasuring 0.19 decimals, appertains to Khata Nos. 90, 184 and 214 of Mauza-Jhangar Toli of Thana-Banmankhi (349) in the District of

Purnea. The respondent No. 5 filed an application under Section 16(3) of the Act, claiming preferential right to purchase the said land on the ground that he was the adjoining Raiyat. The Deputy Collector Land Reforms, however, by orders dated 10.04.1986/17.04.1986, passed in Case No. 57 of 1885-86, rejected the claim of the pre-emption on the ground that the petitioners were adjoining Raiyats of the disputed land, as they had acquired lands adjacent to the land in dispute in the year 1976. The Additional Collector, Purnea in Ceiling Appeal No. 43 of 1986-87, affirmed the order of the Deputy Collector Land Reforms. The order of the Additional Collector, Purnea was challenged before the Additional Member, Board of Revenue, giving rise to Revision Case No. 563 of 1990, by the original respondent No. 5, who died during the pendency of the writ application and has been substituted by his legal representatives/heirs. Learned Additional Member, Board of Revenue, allowed the said revision application and set aside the orders of the Additional Collector, Purnea and Deputy Collector Land Reforms, Purnea dated 10.04.1986/17.04.1986 and 16.08.1990, on the ground that the petitioners could not be treated to be as adjoining Raiyats, on the strength of acquisition of land made by them through purchase or exchange in the year 1976, which was adjacent to the land in dispute. The Additional Member, Board of Revenue held that since the purchase made by the petitioners in the year 1976 was contrary to the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and was made without seeking prior permission of the consolidation, such transfer was invalid.

3. Learned counsel appearing on behalf of the petitioners has vehemently submitted that it was not within the jurisdiction of the Additional Member, Board of Revenue, to have held that the purchase made by the petitioners in the year 1976, was in violation of the provision, contained in Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. He has submitted that such power has been vested in the Consolidation Authorities only and the Additional Member, Board of Revenue, could not have come to this finding. Learned counsel for the petitioners has, however, not disputed the factual aspect that notification under Section 3 of the Act was already issued with respect to the Village in question where the land situate and the consolidation proceeding was in operation when the said sale-deed/exchange deed was executed in favour of the petitioners in the year 1976 with respect to the land, which they claimed to be adjacent to the disputed land.

4. In view of this admitted fact, I am of the view that the Additional Member, Board of Revenue, rightly came to the conclusion that the transfer deeds of the year 1976, on the basis of which the petitioners claimed adjacency to the vended land (which was subject matter of proceeding under Section 16(3) of the Act) was contrary to the express provision as contemplated under Section 32 of the Act, the said sale cannot be said to be valid in the eye of law. In view of the above, the order of the Additional Member, Board of Revenue dated 25.01.1993, passed in Revision Case No. 563 of 1990, does not require any interference.

5. This application is, accordingly, dismissed.