

Anandi Bhagat Vs. Additional Member, Board of Revenue and ors.

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Court : Patna

Decided On : Jul-11-2007

Judge : J.N. Bhatt, C.J.

Appellant : Anandi Bhagat

Respondent : Additional Member, Board of Revenue and ors.

Disposition : Petition allowed

Prior history : J.N. Bhatt, C.J. 1. The short question which has emerged in this writ application under Articles 226 and 227 of the Constitution of India, is whether there should be pre-emption or no pre-emption, challenging the order of the appellate Court recorded in Ceiling Appeal No. 21 of 1983-84/ 67 of 1985-86, whereby, the order of the Deputy Collector, Land Reforms (DCLR), dated 29.8.1983, in Case No. 40 of 1982, came to be reversed, while allowing the appeal and the decision of the appellate Court c

Judgement :

J.N. Bhatt, C.J.

1. The short question which has emerged in this writ application under Articles 226 and 227 of the Constitution of India, is whether there should be pre-emption or no pre-emption, challenging the order of the appellate Court recorded in Ceiling Appeal No. 21 of 1983-84/ 67 of 1985-86, whereby, the order of the Deputy Collector, Land Reforms (DCLR), dated 29.8.1983, in Case No. 40 of 1982, came

to be reversed, while allowing the appeal and the decision of the appellate Court came to be confirmed by the revisional authority by order dated 25th May, 1987, passed by the Additional Member, Board of Revenue, Bihar, Patna in case No. 67 of 1986.

2. The present petitioner is the original applicant who claimed the benefit of right of pre-emption under Section 16(3)(i) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 ('The Act of 1961'), by filing an application before the DCLR (East), Muzffarpur, (respondent No. 3), on 6.9.1982, pursuant to the execution of the sale deed by the owner of the land, respondent No. 5. The sale deed was executed on 8.6.1982 and was registered under the Indian Registration Act on 22.9.1982, in favour of respondent No. 4.

3. The DCLR allowed the application for pre-emption under Section 16(3) of the Act of 1961 holding that the claim for pre-emption of the petitioner is justified as adjoining raiyat, which came to be reversed in appeal and confirmed in revision by the respondent nos.2 and 1, respectively, holding that the right of pre-emption is premature, as the applicant's claim for pre-emption right was not made within three months next after the registration of the sale deed.

4. It is true that in view of the dates mentioned above, the application claiming pre-emption by the petitioner of adjoining raiyat under Section 16(3) of the Act of 1961, came to be made on 6.9.1982, whereas, the registration had taken place under Section 61 of the Indian Registration Act on 22.9.1982. However, it is, equally, true that the document of sale came to be executed by respondent No. 5 in favour of respondent No. 4 in respect of the disputed land much prior to the date of the application for pre-emption as the sale deed was executed evidencing the transfer of the disputed land along with possession with consideration. This aspect appears to have been misappreciated by the appellate or the revisional authorities, while reversing the order of the DCLR, which authority allowed the right of pre-emption claimed under Section 16(3) of the Act of 1961.

5. The right of pre-emption came to be made in respect of the disputed land under the survey plot No. 697, measuring 7 kathas and 11 dhurs situated in village Bazi, P.S. Sakra, District Muzaffarpur in the State of Bihar. This disputed land belongs

to respondent No. 5, Most. Mayawati, who transferred it by virtue of a registered sale deed firstly, by executing sale deed and then handing over the possessions in favour of respondent No. 4 on 8.6.1982, which came to be registered on 22.9.1982.

6. It appears that the very object and intendment of the provisions of Section 16(3) of the Act of 1961 could not be properly appreciated by the appellate and revisional authorities while reversing the order of the DCLR. It is in these context, it would be necessary to refer to the said provisions of Section 16(35) of the Act of 1961, which reads hereunder:

16. Restriction on future acquisition by transfer etc. - (1) No person shall, after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, altered held by him exceeds in the aggregate of the ceiling area.

x x x x x x x

(3)(i) When any transfer of land is made after the commencement of the 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 the land and possession thereof shall be

restored to the transferee 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 a 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.

7. It becomes very obvious and evident from a plain reading of the aforesaid provisions that the right of pre-emption is given to an adjoining raiyat holding the land adjoining to the land transferred within three months of the date of registration of the document of transfer by making an application before the Collector in the prescribed manner for the transfer of land to him on the terms and conditions contained in the sale deed, by depositing 10 % of the total amount of consideration along with the amount of consideration. Probably, intention appears to signify not only willingness but also bona fide of the person claiming such a right. There is no dispute about this aspect that the requisite conditions entitling claim of pre-emption have been complied with, except the dispute that the claim was made after execution of the original sale deed and not registration thereof. This dispute has been settled by several decisions of this Court.

8. This Court in a decision in the case of *Shobhit Mahto v. State of Bihar and Ors.* 2007 (2) PLJR 484 has held that the claim of pre-emption made after the execution of the sale deed and before registration of sale deed, would not be said to be premature. It has been held in the said case that while considering the right of pre-emption as per the intendment of the legislature while interpreting Section 16(3) of the Act it has to be seen that the claim for pre-emption is made within the period of three months from the date of the registration which is the period of limitation prescribed. The sale of the disputed land would be complete only on execution of the sale deed with consideration and handing over the possession, as evidenced in the present case. From the record and factual profile, once

transaction of sale is complete the right of pre-emption would arise. This is the intention of the legislature. This case is squarely covered by the aforesaid decision as a result of which this petition is required to be allowed.

9. Consequently, this petition is allowed quashing the order dated 16.12.1985, passed in Ceiling Appeal No. 21 of 1984-84 and 67 of 1985-86 and the order, dated 25.5.1987 passed in Revision Case No. 67 of 1986 by respondent No. 1, reversing the order of the DCLR which is now restored. There shall be no order as to costs. Rule is made absolute.

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