

**Shanti Devi and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Mar-15-2005

**Judge :** Mridula Mishra, J.

**Acts :** Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Sections 2 and 16(3); Benami Transaction Act, 1984 - Sections 16 and 17; Hindu Succession Act

**Appeal No. :** CWJC No. 4466 of 2002

**Appellant :** Shanti Devi and ors.

**Respondent :** State of Bihar and ors.

**Advocate for Def. :** Binod Kumar Singh and Dharmendra Kumar Raju, Advs.

**Advocate for Pet/Ap. :** Y.P. Sinha No. 1 and Rakesh Ambastha, Advs.

**Disposition :** Application allowed

**Prior history :** Mridula Mishra, J. 1. Petitioners are the purchasers who have filed this application for quashing the order dated 4.3.2002, passed by the Additional Member Board of Revenue, Bihar, Patna (Annexure-5) passed in Rev. Case No. 232 of 2001 and the order dated 30.10.2001, passed by the Additional Collector, Saran at Chapra in Land Ceiling Appeal No. 17 of 2001 (Annexure-4) as well as the order dated. 2.5.2001, passed by the Deputy Collector, Land Reforms (Ceiling) in Morhorah Saran in Land Ceiling

## **Judgement :**

**Mridula Mishra, J.**

1. Petitioners are the purchasers who have filed this application for quashing the order dated 4.3.2002, passed by the Additional Member Board of Revenue, Bihar, Patna (Annexure-5) passed in Rev. Case No. 232 of 2001 and the order dated 30.10.2001, passed by the Additional Collector, Saran at Chapra in Land Ceiling Appeal No. 17 of 2001 (Annexure-4) as well as the order dated. 2.5.2001, passed by the Deputy Collector, Land Reforms (Ceiling) in Morhorah Saran in Land Ceiling Case No. 23 of 2000-2001 (Annexure-3) whereby the pre-emption application filed by respondent No. 5 under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act has been allowed. Petitioners have claimed to be the benami purchasers of their husband who according to the petitioners themselves are the adjoining raiyat of the vended land i.e. Plot No. 482 measuring 1 katha situated in village Rahimpur in the district of Saran.

2. The land under dispute was purchased in the name of the petitioners through registered sale deed dated 23.11.2000, executed by respondent No. 6 Vijay Kishore Upadhyaya for a consideration of Rs. 19000/-. Respondent No. 5 filed an application for pre-emption which was registered as Case No. 23 of 2000-01. The pre-emptor respondent No. 5 claimed to be the adjacent raiyat of the vended land as he possessed Plot No. 482 measuring 12 dhurs situated adjacent southern boundary of the vended land. Petitioners after receiving notice of the case appeared and filed their rejoinder stating that the pre-emptor is not the boundary tenant. By mistake in the sale deed in the southern boundary his name has been mentioned as such pre-emption application at his instance is not maintainable. Further it was stated by the petitioners that their husband are necessary party as the petitioners are only the name lenders. Actually the lands have been purchased by their husband who themselves are the boundary tenant of the vended land and on this account also the pre-emption application was not maintainable. Third objection raised by the petitioners was that the lands which has been purchased through the sale deed is the homestead land and which is not covered by the

definition of the land given under Section 2 (f) of the Act for filing a pre-emption application. The vended land must be the land which is used or capable of being used for agriculture or horticulture and includes lands which is an orchard, Kharhur or pasturage of forest land or also the land perennially submerged under water or the homestead of a land- holder. Homestead means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and includes any out building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house. Under Section 16 (3) of the Act only against those homestead lands application for pre-emption can be filed, which are connected with the agriculture purpose of the land holder, objection of the petitioners was that they are not the land holders, they are simply the 'benamidar' of ostensible purchasers and also that the land is the homestead not connected with the agriculture purpose as such it is not the land under Section 2 (f) of the Ceiling Act. In this circumstances the pre-emption application should not have been entertained by the D.C.L.R. but it was allowed and subsequently by the appellate authority and the revisional authority. The objection of the petitioners was rejected.

3. The petitioners have challenged the impugned orders on the ground that the D.C.L.R. without appreciating the issues involved has allowed the pre-emption application by his order dated 2.5.2001. The appellate authority also failed to give any finding on this issue that the petitioners are ostensible owners. The Member Board of Revenue failed to consider the facts as well as law involved in this case.

4. The respondent No. 5 though did not file any counter affidavit, but while advancing argument has stated that the respondent No. 5 is an adjacent raiyat which is apparent from the sale deed. In the sale deed itself the name of respondent No. 5 has been given as a boundary tenant as such it needs no proof other than the sale deed. So far the claim of the petitioners that they are ostensible owners and their husband are the actual land holders, as such they should have been impleaded as party, learned counsel for respondent No. 5 has stated that after the enactment of the Benami Transaction Act, 1984. The concept of benami transaction has totally been changed. Now no one claim to be a name lenders of

the actual purchaser. The land is deemed to be of that person in whose favour sale deed has been executed. In case of females i.e. the wife and daughters, if it is purchased by the husband or father land will be deemed to be belonging to the wife or the daughter.

5. The argument advanced by the respondents counsel is that under the ceiling act the concept of benami transaction is not accepted. He has placed reliance on Full Bench decision in the case of Yugal Kishore Singh and Anr. v. The State of Bihar and Ors., reported in 1985 BLJR 383, and also in the case of Upendra Mishra and Anr. v. Smt. Inchan Mishra and Anr., 1986 BLJR 666. In 1986 BLJR the Full Bench decision of 1985 BLJR has been discussed and the finding is that the claim of benami should be raised by the ostensible owner at the initial stage. If such claim has been made at initial stage in that case it will be obligatory on the part of the revenue authority to enquire the claim of benami/ ostensible owner. In 1985 BLJR (FB) 383, it has been held that. 'Therefore, on principle, on the language of the statute and on previous precedent it must be held that well established and well entrenched concept of benami transaction is not ousted or abolished for the purposes of Section 16 of the Act.' In this Full Bench it has been discussed that benami purchase with reference to the Ceiling law can be made where neither the original owner's land nor the ostensible owner's of land, when tagged separately with the purchased land, would exceed the ceiling limit. If however, it exceeds the ceiling limit then the penal provisions of Section 17 of the Act will at once be attracted. These provide sufficient safeguard against such benami purchase by no unscrupulous persons in contravention of the Ceiling law. Meaning thereby that the ceiling laws though they prohibit the holding of land in excess of ceiling area (either directly or benami as farzi holding) yet they do not seem to oust or abolish the well entrenched concept of benami holdings in Indian Law, where same is within the limits of the permissible area. Concept of benami transaction is acceptable in case of pre-emption but the claim must be made at the initial stage and the ostensible owner as well as the real owner should not held land excess of the ceiling limit. This means that the claim of benami should not be made with a purpose to defeat the provisions of the Ceiling Act.

6. In the present case the petitioners/purchasers have raised this objection at the initial stage that they are the name lenders, to their husband who are real purchasers, as well as adjacent raiyat of the vended land. However, in their objection the petitioners did not make any declaration to this effect that the lands possessed by them as well as the land possessed by the real owner i.e. their husband do not exceed the ceiling limit. This was for the revenue authorities to get the matter enquired into whether the ostensible owner or the real owner possessed land exceeding the ceiling unit. Only in case that the ostensible owner or the real purchaser possessed land beyond the ceiling limit, the claim of the petitioners that they are the benamidars and not the real purchasers should have been rejected by the D.C.L.R. Admittedly no such enquiry was done and going on the totally different line the objection of the petitioners was rejected. The Additional collector and the Additional Member Board of Revenue all have simply discussed in their orders that under the Hindu Succession Act, since the wives are not a co-sharer of their husband, therefore, they cannot claim to be the adjacent raiyat of the vended land, only because lands standing in the name of their husband are adjacent to vended land. There is no discussion with regard to the claim of the petitioners being benamidar as well as ostensible owner in accordance with law which was mandatory as the principle of benami is applicable and accepted in a case of ceiling act. So far the nature of the land being homestead is concerned, the argument advanced by respondent No. 5 is that in the sale deed it has been mentioned that it is irrigated land as such the nature of the land is agricultural, petitioners cannot go against the recital in the sale deed.

7. In my opinion for deciding the nature of the land whether it is agricultural or homestead, the authorities should have conducted an enquiry and on being satisfied on the basis of enquiry report only it could have been decided whether the nature of the land is homestead or it is agricultural land with respect to which the pre-emption application is maintainable.

8. Question regarding adjacency can be decided only after the claim of the petitioners being the ostensible owner of the vended property is enquired and decided. If it is found that actually the petitioners are ostensible owners not holding land beyond the ceiling unit and the real purchasers is their husbands who also do

not possess land beyond ceiling unit, the claim of petitioners being the ostensible owner could be decided in favour of the petitioners. Once it is decided that the petitioners are ostensible owners then naturally their husband possessing land adjacent to the vended plot are the real owners and adjacent raiyat of the vended land. In that case the pre-emption application naturally will not be maintainable. The orders contained in Annexures 3, 4 and 5 are quashed. The matter is remanded to the D.C.L.R. Chapra for deciding (i) claim of the petitioners as ostensible owners of the vended land in the background of the Full Bench decision reported in 1985 BLJR 383, to conduct an enquiry regarding the nature of the land and thereafter decide the pre-emption application filed by respondent No. 5.

9. With these observations/directions, this application is allowed.

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