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Court : Patna

Decided On : Nov-02-1997

Judge : M.Y. Eqbal, J.

Appeal No. : Civil Writ Jurisdiction Case No. 1208 of 1989 (R)

Appellant : Urmila Devi

Respondent : State of Bihar and ors.

Advocate for Def. : Mr. Section Srivastava, Mr. Srivastava

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. Heard Mr. N.K. Prasad, learned Sr. Counsel for the petitioner, and Mr. Section Srivastava, learned Counsel for the respondent No.5.

2. It appears that at the initial stage, this writ petition was dismissed in limine on 24.7.1989 by a Division Bench of this Court. Against the order of dismissal, the petitioner moved before the Supreme Court in S.L.P. No. 11115 of 1989. The Apex Court remanded the matter in terms of the order dated 4.1.1996 directing this Court to dispose of the writ petition after deciding the question involved therein. Thereafter this writ petition was admitted for hearing on 13.8.1996 and has

come before me for final hearing today.

3. The petitioner in this writ petition has challenged the order dated 1.8.1988 passed by respondent No. 3 in Land Ceiling Appeal No. 63 of 1986-87, and the order dated 13.6.1989 passed by respondent No. 2 in Singhbhum Land Ceiling Revision No. 309 of 1988. The proceeding arose out of an 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, 1961 (hereinafter to be referred to as 'the Act' for short).

The land in dispute comprised within Khata No. 69, Khasra No. 5, measuring an area of 12 decimals of land originally belonged to Manoranjan Mahanty (respondent No. 6) who sold it to the petitioner by virtue of a registered deed of sale dated 3.1.1986, a copy of which is Annexure 1 to this writ petition. After the said sale, respondent No. 5 claiming himself to be the adjoining raiyat filed an application under Section 16(3) of the said Act before the Land Reforms Deputy Collector, Chakradharpur. The said application was registered as Land Ceiling Case No. 11 of 1985-86. On being noticed the petitioner appeared and contested the application by filing show cause stating, inter alia, that the land is not an agricultural land and the same was used for non-agricultural purposes. Various other defence were taken by the petitioner. The Land Reforms Deputy/Collector after hearing the parties rejected the pre-emption application. The pre-emptor (respondent No. 5) then preferred an appeal before the Additional Collector, Singhbhum at Chaibasa, being L.C. Appeal No. 63 of 1986-87. The said appeal was allowed and the order passed by the Land Reforms Deputy Collector was set aside. The appellate authority directed for re-convey of the property in question in favour of respondent No. 5. The petitioner then moved in revision before the Member Board of Revenue, where the appellate order was eventually affirmed and the revision application was dismissed.

4. Mr. N.K. Prasad, learned Sr. Counsel for the petitioner, assailed the impugned orders passed by the appellate authority and the revisional authority as being illegal and wholly without jurisdiction. Learned Counsel drawn my attention to Annexure 1, copy of the sale deed in question, and submitted that from the sale

deed it will appear that the nature of the land was shown as 'Purani Parti having Pasauri Haque' and there is a Khapara Posh house in a portion of the land which is situated within Chakradharpur Municipality. Learned Counsel then submitted that from the sale deed it will not appear that either the vendor ever used the land as agricultural land or it has been used for non-agricultural purposes on the date of transfer in favour of the petitioner. Learned Counsel, therefore, submitted that the original authority came to a right conclusion that the land being the non-agricultural land the provision of Section 16(3) of the Act is not applicable. Learned Counsel further submitted that the appellate authority and the revisional authority have based their findings either on assumption or on consideration or irrelevant facts or those facts which are not on record.

5. On the other hand, Mr. Srivastava, learned Counsel for the respondent pre-emptor, first of all submitted that when the two Courts, namely, the appellate court and the revisional court came to a concurrent finding that the nature of the land is an agricultural land and respondent No. 5 is he adjoining raiyat and the provision of Section 16 of the Act is fully applicable, this Court in exercise of writ jurisdiction under Article 226 of the Constitution cannot and should not disturb those findings. Learned Counsel further submitted that the land together with house, which is in dispute fulfills the definition of the 'Homestead land' as defined in Section 2(f) of the Act.

6. First of all, I will take up the first point, i.e. the preliminary point, taken by Mr. Srivastava that in view of the concurrent finding there is no scope of judicial review and this Court should not revoke its writ jurisdiction under Article 226 of the Constitution. At this juncture, the principle laid down by the Apex Court in a recent decision reported in : (2000)IILLJ648SC , Union of India and Anr. v. G. Ganayutham may be referred. The Apex Court in that case while considering the scope of judicial review has held that reasonableness and rationality are the grounds for judicial review. Even the principle of proportionality can also be invoked to analyse the quasi-judicial or administrative orders. While analysing the word 'reasonableness' the Apex Court held as under:

According to Wednesbury case, while examining 'reasonableness' of an administrative decision the Court has to find out if the authority has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one.

7. In the light of the observation made by the Apex Court, referred to above, this Court can analyse the impugned orders to come to the conclusion whether the orders are based on irrelevant facts or there is non-consideration of relevant facts. The submission of Mr. Srivastava, therefore, cannot be accepted.

8. Coming back to the two orders, passed by the appellate authority as well as the revisional authority, I find that the findings given by these two authorities are based on either no evidence or on surmises. As noticed above, the sale deed in question does not show that the nature of the land is agricultural land. Learned Counsel for the respondent could not point out any evidence led by the pre-emptor to the effect that the land was and is used or agricultural purposes. Even there is no whisper that the adjoining land which is paid by respondent No. 5 is used for agricultural purposes. In absence of any evidence to the effect it cannot be said that the land together with house is a Homestead land within the definition of Section 2(f) of the said Act.

Besides the above, the land in question is admittedly situated within the Chakradharpur Municipality and there are houses together with land in the boundaries as shown in the sale deed. This can, therefore, be safely inferred that the land in question is not used as agricultural land. In that view of the matter, the appellate authority and the revisional authority have committed serious illegality in holding that the provision of Section 16(3) of the Act is applicable Moreover, right of pre-emption is a very week right and unless it is proved by strong Prima facie and conclusive evidence that the person seeking pre-emption is either co-sharer and adjoining raiyat and that the land is used for agricultural purpose the application for pre-emption should not be allowed.

9. Having regard to the facts and circumstances of the case and the discussions made above, I am of the opinion that the impugned orders passed by the appellate authority and the revisional authority cannot be sustained in law.

10. In the result, this application is allowed and the impugned orders passed by the appellate authority and the revisional authority are quashed and that the order passed by the original authority, namely, the Land Reforms Deputy Collector, Chakradharpur is restored. However, there shall be no order as to costs.

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