

Dharmendra Singh Vs. Additional Member, Board of Revenue and ors.

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Court : Patna

Decided On : Mar-28-2007

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

Acts : Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Sections 16(3), 30 and 32; [Code of Civil Procedure \(CPC\)](#) , [1908](#) - Order 21, Rule 34; [Constitution of India](#) - Articles 39, 226 and 227

Appeal No. : Civil Writ Jurisdiction Case No. 7637 of 1988

Appellant : Dharmendra Singh

Respondent : Additional Member, Board of Revenue and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Anil Kr. Mukund and Praveen Kr. Sinha, Adv.

Judgement :

J.N. Bhatt, C.J.

1. By this writ petition under Articles 226 and 227 of the [Constitution of India](#), the challenge is against the order passed by the Additional Member, Board of Revenue, Patna, in Case No. 78 of 1986 upholding the order of the appellate authority of the Additional Collector, Saharsa, in CA No. 52 of 1983-84, on the ground that the impugned orders are bad in law as the petitioner was not a party

before the first revenue authority, i.e., Land Reforms Deputy Collector (LRDC), and, therefore, the subsequent orders are required to be quashed and set aside.

2. Let there be narration of conspectus of the factual profile giving rise to this petition. Respondent Nos. 4 to 7 claimed for pre-emption by filing a case under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 ('the Act of 1961') before the Deputy Collector, Land Reforms, (LRDC), Birpur, in Ceiling Case No. 9 of 1982-83, in respect of a parcel of land having an area of 10 kathas of old plot No. 1188 corresponding to new plot No. 2696 and 2697, under old khata No. 203 of village Birpur, P.S. Chattapur, which is hereinafter to be referred to the land in question. The said application came to be rejected by order dated 15.3.1983. Copy of the order of the first revenue authority (LRDC) is placed as Annexure 1 to the petition.

3. Respondent No. 9 Khokha Singh sold the land in question to respondent No. 8, Ram Charitar Singh by registered sale deed dated 2416 executed on 6.3.1982, who, thereafter, sold the land in question to the petitioner through sale deed No. 7516 dated 31.8.1982 and registered on 3.7.1982. Respondent Nos. 4 to 7 filed an application on 19.8.1982 before the D.C.L.R., Birpur after depositing consideration money and 10 % thereof for pre-emption of the sold land. That application was rejected, as stated earlier, which was challenged before the appellate authority by the respondent Nos. 4 to 7 by filing Ceiling Appeal No. 52 of 1983-84 before the Additional Collector, Saharsa under Section 30 of the Act of 1961. The appeal was allowed after hearing the parties including the petitioner and being dissatisfied with the order passed by the appellate authority, the petitioner filed a revision under Section 32 of the Act of 1961 before the Member, Board of Revenue, Bihar, and the revisional authority, upon consideration of the facts and circumstances and after hearing both the parties, dismissed the revision confirming the order of the appellate authority by order dated 20.11.1987 passed by Additional Member, Board of Revenue, Bihar, hence, this writ petition under Article 226 of the [Constitution of India](#). The right of pre-emption is an aged old legislation and is deep rooted not only in the ancient history of this country but various other countries. In Sub-section (3) of Section 16 of Chapter V, of the Act of 1961, this right is statutorily crystalised subject to fulfilment of certain conditions prescribed

therein. It will be, therefore, material and important to refer to the provisions of Section 16(3) of the Act of 1961. These provisions read 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.

XXX XXX XXX

(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.

4. Thus, Section 16 of the Act of 1961 contained in Chapter v. prescribes provisions for restriction on future acquisition by transfer etc.. It could very well be visualized from the aforesaid provisions that clause (i) of Section 16(3) of the Act of 1961 stipulates that on happening of any transfer of land made after the commencement, of the Act of 1961 to any transferee, other than co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, is competent and entitled, within three months of the date of the registration of the document of the transfer, to make an application before the Collector in prescribed manner for the transfer of the land to him on the terms and conditions in the said deed. Other pre-requisites are provided in the two provisoes.

5. The Act of 1961 has a laudable object. The Act is a piece of social legislation for agrarian reforms. The design and desideratum of the legislation is to break up the concentration of ownership of control of material resources of the community and to so distribute the land as best to subserve the common good as enshrined under Article 39(b) of the [Constitution of India](#).

6. Let it be also mentioned that having regard to the scope of agriculture available in the State of Bihar, once upon a time it had one of the highest per capita density in the whole of the country before bifurcation. It is in these context, the ceiling law appears to be reasonable and fair. One of the objects has been to make the provision for equitable distribution of natural resources and, therefore, it was thought, expedient to enact such provision of making surplus land available for the distribution to landless peasantry. There is one view that such an Act is a commendable effort to make available land to the members of the family and persons living below the poverty line to ameliorate the poverty of the landless agriculturists.

7. It could also very well be appreciated from the entire purpose of the said legislation that the ceiling on agricultural holdings once fixed cannot be allowed to

remain static and unalterable for all times to come. It is in these context as could be seen from the legislative history that the provisions have been made to make suitable, changes in view of the changing social needs and circumstances. There is also definite and specific philosophy of the 'doctrine of PRE-EMPTION'. No doubt at times it has been held to be a very weak right. A person who claims right, of pre-emption has to successfully answer the eligibility criteria prescribed in Section 16(3) of the Act of 1961 within three months of the date of registration of the document and the transfer.

8. Coming to the main issue, in the instant case, the Court is called upon to consider and determine the merits of the order passed by the revisional authority, whereby the order passed by the appellate authority came to be affirmed and confirmed. The revision was filed by the writ petitioner unsuccessfully. The first authority rejected the application for pre-emption under Section 16(3) of the Act of 1961 which was reversed in appeal and affirmed in revision, as state above.

9. The main contention raised on behalf of the petitioner has been that he is also a raiyat and transferee of the property situated adjoining to the disputed land and he was not given an opportunity of hearing by the first revenue authority. Of course, the petitioner was a party in the appeal, as well as in the revision, as revision was at his instance. On consideration of facts and circumstances and the submissions raised before this Court, it is very clear that before the first revenue authority, the petitioner's predecessor - in -title was joined and heard as is evident from the impugned order of the first revenue authority placed at Annexure 1 to this writ petition.

10. This contention, raised on behalf of the petitioner, upon consideration of the facts and circumstances, as well as, submissions and the legal proposition of law cannot be accepted for the reason that the application for pre-emption was made prior to the date of purchase of the adjoining property by the petitioner. The application for pre-emption under Section 16(3) of the Act of 1961 came to be made by respondent Nos. 4 to 7 on 19.8.1982, whereas, the petitioner purchased the adjoining property by sale deed on 31.8.1982. Obviously, therefore, on the date on which the pre-emption application was filed, there was no question of

joining the petitioner as party as he had not acquired right, title and interest in the property. It is not the case of the petitioner that he made any attempt to be impleaded as a party which was rejected. Again, while keeping in mind the celebrated principles of jurisprudence, when no adverse order is passed against, a party, such contention becomes lame as he has not been visited with any civil or evil consequences.

11. Therefore, on both the counts, the contention that since the first revenue authority decided and rejected the application for pre-emption made by respondent Nos. 4 to 7 under Section 16(3) of the Act of 1961, in absence of the petitioners, the subsequent orders passed by the appellate, as well as, the revisional authority is bad in law, cannot be accepted. Again, there is one more reason referable to the admitted fact that in appeal, the petitioner was made respondent party by the respondent Nos. 4 to 7, who filed the appeal. The order of the appellate authority also, clearly, stipulates that the learned lawyers appearing on behalf of different parties had been heard. What prejudice is caused to the petitioner in non-joining of the party? That too, when a right had not been acquired to the petitioner before the first revenue authority considering the question of right of claim for pre-emption under Section 16(3) of the Act of 1961. Not only that, again remaining unsuccessful in the appeal battle, the petitioner availed the opportunity of revision under Section 32 of the Act of 1961 but, unsuccessfully. Therefore, on the totality of these grounds, the contention raised before this Court on behalf of the petitioner must fail.

12. In the light of the facts and circumstances, when two revenue authorities have reached to a concurrent finding of fact for the consideration and determination of the right, of pre-emption of the respondent Nos. 4 to 7, this Court does not find any flaw or infirmity in their orders. Let it be mentioned that scope of issuance of a writ under Article 226 of the [Constitution of India](#) is circumscribed to the effect that this Court is not sitting in appeal over the decision of the revenue authority treating it as appeal nor the Court is required to consider the quality of the order. Until and unless it is, successfully, shown to the satisfaction of the court: under Article 226 of the Constitution that the impugned order or decision is illegal, unjust, unreasonable, without evidence or is, patently, causing great injustice to the party,

the Court would be at loath to interfere in exercise of powers under Article 226 of the [Constitution of India](#).

13. In the result, therefore, this petition must fail. Accordingly, this application shall stand dismissed. Rule is discharged. No costs.

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