
(2007) 05 PAT CK 0080

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6824 of 1989

Bibi Rabia Khatoon

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: May 2, 2007

Acts Referred:

- Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Section 16(3)

Citation: (2007) 2 BLJR 2388 : (2007) 4 PLJR 142

Hon'ble Judges: Aftab Alam, J

Bench: Single Bench

Advocate: Yogesh Chandra Verma and Birendra Kumar Mishra, for the Appellant;

Final Decision: Allowed

Judgement

Aftab Alam, J.

Heard Mr. Birendra Kumar Mishra, Counsel for the petitioner. The State Counsel is present. No one appears for respondents 5 or 6 despite service of notice.

2. This writ petition arises from a pre-emption proceeding u/s 16(3) of the Bihar Land Ceiling Act and the petitioner before the Court is the vendor of the disputed land.

3. The claim of pre-emption was raised in respect of a piece of land 0.33 decimals in area bearing plot No. 79 (old)/156 (new) under khata No. 5 (old)/109 (new) situate in village Dhanawa, circle Barachatty, revenue thana No. 128 in the district of Gaya.

4. On 26.12.1984, the petitioner executed a sale deed in favour of Atique Ahmad (respondent No. 6). On registration of the sale deed, Ozaira Khatoon (respondent No. 5) raised the claim of pre-emption, and on 14.3.1985 made an application u/s 16(3) of the Act before the Deputy Collector Land Reforms, Sherghati. In response to the notices issued to the vendor (the present petitioner) and the vendee

(respondent No. 5) they took the plea that the claim of pre-emption was not maintainable as no sale had in fact taken place due to the vendee's failure to pay the consideration money.

5. It was stated on behalf of the petitioner that though in the sale deed, it was stated that, the vendee was given delivery of possession of the transferred land, as a matter of fact, that was not so. It was also pointed out that in the sale deed itself, it was stated that the consideration money of Rs. 9,000/- would be paid at the time of exchange of chirkut (Takabzul Badlain). After the sale deed was submitted for registration, the petitioner repeatedly asked the vendee for payment of the consideration money. He, however, asked for more time. On 22.04.1985, the petitioner sent a legal notice to the vendee demanding the consideration money and making it clear that on his failure to make the payment, she would cancel the sale deed. In reply, the vendee expressed his inability to pay the consideration money due to financial stringency. As no consideration money was paid, the chirkut always remained with the petitioner and it was she who obtained the sale deed from the registration office. Later on, she also cancelled the sale by executing a deed of cancellation on 23.04.1985.

6. The vendee-respondent No. 5 fully supported the case of the petitioner and admitted that the title or possession of the land had not passed to him for his failure to pay the consideration money to the petitioner.

7. The petitioner also prayed before the Deputy Collector Land Reforms to allow her an opportunity to adduce evidence in support of her case that the sale deed executed by her had remained ineffective and inoperative due to non-payment of the consideration money.

8. The Deputy Collector Land Reforms, however, did not allow her any opportunity to lead evidence and finally by order, dated 1.8.1985 allowed the claim of pre-emption raised by respondent No. 5. The Deputy Collector Land Reforms observed that from the recitals of the sale deed, it appeared that possession of the land was given to the vendee at the time of its execution. He went on to hold that the title and possession of the land had duly passed to the vendee; the deed of cancellation was of no consequence as a valid sale could not be nullified by executing a deed of cancellation and, in any event, it was executed after the institution of the pre-emption case. The Deputy Collector Land the vendee to execute the sale deed in respect of the disputed land in favour of the pre-emptor.

9. Against the order passed by the Deputy Collector Land Reforms, the petitioner (and not the vendee) preferred an appeal before the Collector, Gaya. The Collector upheld the petitioner's plea that the sale was not effective and operative due to non-payment of the consideration money and by order, dated 23.06.1987 in Case No. 74/85-86 allowed the appeal, set aside the order of the Deputy Collector Land Reforms and rejected the claim of pre-emption of respondent No. 5.

10. The pre-emptor took the matter before the Board of Revenue in Case No. 207 of 1987. The revision filed by the pre-emptor was allowed by the Additional Member of the Board by resolution, dated 1.7.1989.
11. This writ petition is filed challenging the orders of the Additional Member, Board of Revenue and the Deputy Collector Land Reforms, Sherghati.
12. Learned Counsel submitted that in the first, place, the Deputy Collector Land Reforms was not right in denying opportunity to the petitioner to lead evidence in support of her case that the sale was ineffective and inoperative. Moreover, on the basis of the materials already before the Deputy Collector Land Reforms, it was unreasonable to hold that the sale was valid and operative and the title in the land had infact passed to respondent No. 6. Learned Counsel submitted that it is well settled that no sale is completed until the payment of the consideration money. In this case, the sale deed itself stated that the consideration money would be paid at the time of exchange of chirkut. The petitioner had given a legal notice to the vendee demanding the consideration money on 22.4.1985 in response to which the vendee expressed his inability to pay the consideration money. He also accepted before the Deputy Collector Land Reforms that he had not paid the consideration money and had not come in possession of the disputed land. Learned Counsel further submitted that the Deputy Collector Land Reforms was manifestly in doubt on this issue because by his order he directed both the vendor (the petitioner) and the vendee to execute the sale deed in favour of the pre-emptor. In a pre-emption proceeding, no direction for transferring the land would be given to the vendor and such a direction can only be given to the vendee because by virtue of the sale, the title in the land would have passed to him. On that score also, the order of the Deputy Collector Land Reforms, reaffirmed and restored by the Board of Revenue, was quite bad, invalid and illegal.
13. On hearing Counsel for the petitioner and on going through the orders passed by the authorities under the Act, I find that the submissions made on the behalf of the petitioner have substance and are fit to be accepted. In the facts and circumstances of the case, it is difficult to hold that the sale deed, dated 26.12.1984 executed by the petitioner in favour of respondent No. 6 was effective and operative. That being the position, no claim of pre-emption was maintainable in respect of the land under that. sale deed.
14. I accordingly find that, the orders passed by the Deputy Collector Land Reforms and the Board of Revenue are untenable. The two orders are set aside and the claim of pre-emption raised by respondent No. 5 is rejected.
15. In the result, this writ petition is allowed but with no order as to costs.