IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8078 of 1998
With
I.A. No.3874 of 2015

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1. Upendra Yadav.
2. Rajendra Yadav.
3. Jai Narain Yadav.

All are sons of late Bhagwat Prasad Yadav and are residents of Village- Sukhasan Tola, Bhawanipur, Police Station- Singheshwar, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Madhepura.
4. The Deputy Collector, Land Reforms, Madhepura.

……. Respondents 1st Set.

5. Chandrika Dubey, son of late Sheo Ram Dubey,(expunged and substituted vide present judgment).

5(1) Suresh Chandra Dubey.
5(2) Umesh Chandra Dubey.

Both are sons of late Chandrika Dubey (original respondent no.5) and are residents of Village- Rupauli (Sihpur), P.S. Gamhariya, District- Madhepura.

……. Respondent 2nd Set.

6. Ram Bahadur Mukhia, son of late Moti Lal Mukhia, resident of Village- Sukhasan Tola, Bhawanipur, Police Station- Shngheshwar, District- Madhepura.

.... Respondent 3rd Set.

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Appearance :

For the Petitioner/s : Mr. Bam Bahadur Jha
Mr. Gajendra Kumar Jha
For the Respondent-State : Mr. Pratik Kumar Sinha, AC to GA-12
For the Respondent No.6 : Mr. Ras Bihari Thakur

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 14-05-2015

Heard Mr. Bam Bahadur Jha, learned counsel appearing on behalf of the petitioners, Mr. Pratik Kumar Sinha, learned Assisting Counsel to Government Advocate No.12 for the State and Mr. Ras Bihari Thakur for the respondent no.6. Though notice was held to be validly served on respondent no.5 but he has not chosen to appear.

Re: I.A. No.3874 of 2015:

This interlocutory application has been filed for expunging the name of respondent no.5, Chandrika Dubey who has deceased during the pendency of the writ petition and for substituting his legal heirs whose names are mentioned in paragraph 1 of this interlocutory application.

Respondent no.5 was the vendor of the land in question and had executed the sale-deed in favour of respondent no.6 and by virtue of the orders passed by the statutory authorities allowing the pre-emption application of the petitioner, the lands were conveyed in favour of the petitioners.

Having heard learned counsel for the parties the prayer is allowed. Let the name of deceased respondent no.5 (Chandrika Dubey) be expunged and be substituted by his legal heirs whose names are mentioned in paragraph 1 of this interlocutory application.

I.A. No.3874 of 2015 stands allowed.

Re: CWJC No.8078 of 1998:

This writ petition filed under Article 226 of the Constitution of India questions the order dated 11.8.1998 passed by the Additional Member, Board of Revenue in Revision Case No.416 of 1993, whereby the learned Additional Member, Board of Revenue while maintaining his earlier order dated 11.1.1996, has dismissed the revision application.

The facts of the case briefly stated is that the private respondent no.6 purchased the disputed plots from respondent no.5 vide sale deed No.1951 of 1986 executed on 14.2.1986. The land bears Khata No.306 (old)/1735 (new), plot no.2669 (old)/3486 (new) having an area of 0.45 decimals in Mauza Sukhasan Tola, Bhawanipur, P.S. and Anchal- Singheshwar in the district of Madhepura. The petitioners filed an application invoking the provisions of section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Ceiling Act') after fulfilling the statutory obligations on 14.5.1986 in the court of Deputy Collector Land Reforms, Madhepura (hereinafter referred to as 'the DCLR') giving rise to Land Ceiling Case No.2 of 1986-87. The purchaser-respondent no.6 appeared before 'the DCLR' and the pre-emption application was dismissed on 10.6.1986. The writ petitioners preferred appeal before the Collector, Madhepura giving rise to Land Ceiling Appeal No.25 of 1986. The appeal was allowed and the matter was remitted to the Court of 'the DCLR'. On remand 'the DCLR' again issued notice to the purchaser and after hearing the parties, the pre-emption application filed by the petitioners was allowed vide order dated 6.9.1990. The purchaser respondent no.6 preferred a statutory appeal giving rise to Land Ceiling Appeal No.1 of 1991-92/1 of 1992-93 in the court of Additional Collector, Madhepura and which was dismissed vide order dated 29.6.1993. In between the purchaser has also moved in Pre-emption Suit No.84 of 1990 which was dismissed on 11.10.1991 on grounds of maintainability.

After dismissal of the appeal the purchaser invoked the revisional jurisdiction of the Board of Revenue under section 32 of 'the Ceiling Act' and which was allowed by an ex-parte order passed on 11.1.1996. The petitioners being aggrieved moved this Court in CWJC No.4151 of 1996 which was permitted to be withdrawn with the liberty to the petitioners to move before the Board of Revenue for recall of the ex-parte order dated 11.1.1996. The petitioners filed a proper application before the Board of Revenue on 16.3.1998 for recall of the ex-parte order dated 11.1.1996 and which, after being entertained, the Board of Revenue by the impugned order passed on 11.8.1998 has upheld his previous order passed on 11.1.1996 inter alia on grounds that allowing the pre-emption application would defeat the object for which the Bihar

Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Consolidation Act') was enacted. On this sole account the orders passed by the statutory authority was set aside.

I have heard learned counsel for the parties and I have perused the materials on record.

Mr. Pratik Kumar Sinha, learned counsel appearing on behalf of the State very fairly submitted that although he would be contesting the arguments of learned counsel for the petitioners but even while contesting as such he would not be in a position to support the impugned order in view of the law settled by this Court in the judgment reported in **AIR 1981 Patna 273 (Sunania Devi vs. Additional Member, Board of Revenue, Patna)** wherein, on identical issue being raised, the Bench held in paragraphs 4 and 5 of the judgment as follows:

> "4.The argument advanced by Mr. Ghose seems to be attractive and, if I may say so, ingenious but, giving a deeper thought to the provision, I do not find it possible to accept the same. The Ceiling Act is a later legislation being an Act of 1961. The legislature, therefore, must be deemed to be aware of the provisions contained in Sec.5 of the Consolidation Act while enacting the provisions of S.16 (3). The non obstante clause contained in Sec. 39 of the Consolidation Act, referred to earlier, is to make the provisions of the Consolidation Act to prevail over any other Act or law to overcome any contrary provision contained therein with the sole and dominant purpose to achieve the objects of the consolidation namely for providing the

consolidation of holdings and avoiding fragmentation.

On reading the scheme of S.16 (3) of the Ceiling Act also it is obvious that the dominant object underlying the said provision is also consolidation of holdings and prevention of their fragmentation, as by the said provision the legislature intended that if a transferee of the land happened to be an outsider, then a co-sharer of the land or an adjacent raiyat must be allowed to pre-empt the transactions so that fragmentation of holdings can be avoided. The underlying intention of the legislature under the provision for pre-emption, therefore, is the same and similar to that as contained in the Consolidation Act. The legislature, therefore, by providing S. 16 (3) of the Ceiling Act did not make any inroad on the provisions of the Consolidation Act. Rather, it wanted to achieve the same purpose and object as was intended under the Consolidation Act and to strengthen the scheme of consolidation and to prevent fragmentation even after the scheme of consolidation was over.

5. The golden rule of harmonious construction of a statute is to see the purpose behind the enactment and the general rule the Courts are to apply is to put that construction which best carries into effect the purpose of the statute under consideration. Even in a case where two enactments are inconsistent, obedience to each of them may be possible without doing any violence to the other. It was observed by Lord Langdale, M.R., in the Dean, etc. of Ely. V. Bliss (1842-49 ER 700) that if two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. The Supreme Court in the case of Sarwan Singh v. Kasturi Lal (AIR 1977 SC 265) also took a similar view. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is in consistent with some previous enactment. For one statute to cancel another they must be mutually destructive. Examining, therefore, the provisions of the two Acts under consideration, I am of the view that there is no apparent conflict between the two provisions, rather the principle behind Section 16 (3) of

> the Ceiling Act is to consolidate the scheme of the Consolidation Act, that is, to avoid fragmentation of a holding even after the consolidation work is over and completed by conferring a legal right in an adjacent raiyat or a co-sharer of the land to get it transferred in his favour from a third person or an outsider for maintaining the compactness of the block. The proviso added to S. 4(c) by the amending Consolidation Act also lends support to such a construction."

Apart from the fact that the learned Additional Member, Board of Revenue has not bothered to meet the reasoning assigned by the statutory authorities under 'the Ceiling Act' to allow the pre-emption application of the petitioners, even the reasonings so assigned by the Additional Member, Board of Revenue to upset the orders of the statutory authorities is in the teeth of the judicial pronouncement of this Court rendered in the case of **Sunania Devi** (supra). A decision on a pre-emption application though rests on the statutory provisions of 'the Ceiling Act' but in fact, is a conclusion on facts apparent at the ground level and unless the pre-emptor would satisfy the statutory requirements and happens to be the boundary raiyat, there is no relief for him. These are issues of facts and which needs to be adjudicated but are missing in the order of the Additional Member.

In so far as the present case is concerned there is a conclusive finding of the original authority i.e. 'the DCLR' as well as the Appellate Authority that the petitioners fulfill all statutory requirements to claim their right of pre-emption as envisaged under section 16(3) of 'the Ceiling Act'. There being such conclusive finding of fact, in absence of any materials present in the order of the revisional authority to upset such finding, the conclusion drawn by 'the DCLR' and the Additional Collector required no interference.

For my reasons aforementioned and in view of the pronouncement of this Court rendered in the case of **Sunania Devi** (supra) the order impugned dated 11.8.1998 passed by the Additional Member, Board of Revenue in Revision Case No.416 of 1993 cannot be upheld and is accordingly set aside.

Since by the interim order passed by this Court on 22.9.1998, the right of the petitioners stood protected, the same stands confirmed.

The writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

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