IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.438 of 1998

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1. Mushtaque Ahmad
2. Farooque Ahmad,

Both sons of Late Abdul Majeed, both residents of village, P.O. and P.S.- Darpa Tola Pipra, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member of Revenue, Bihar, Patna.
3. The Collector, East Champaran.
4. The D.C.L.R., Sikarahana, Motihari.
5. (i) Lachhminia Devi, wife of Gauri Shankar Mahto
   (ii) Ram Ekbal Mahto,
   (iii) Sheo Basant Mahto
   (iv) Janak Mahto
   (v) Hira Lal Mahto
   All sons of Gauri Shankar Mahto.
   (vi) Mainamati Devi, daughter of Gauri Shankar Mahto.
6. Narsingh Mahto, son of Mukhlal Mahto
   All residents of village, P.O. and P.S.- Darpa Tola Pipra, District- East Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rabhib Ahsan, Sr. Advocate.
Mr. K. Ahmad Siddique
Mr. Md.Matloob Rab

For the Respondent/s : Mr. Pankaj Kumar Pankaj , A.C. to S.C. 33.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 14-05-2015

Heard Mr. Raghib Ahsan for the petitioner. No one has appeared on behalf of the private respondent in spite of service of notice, although the name of the counsel for the respondent appears in the cause list. No counter affidavit has been filed.

On 2.5.1984, two documents came to be registered. Annexure-6 is the deed of exchange in respect of altogether 5 kathas

10 dhurs of land which was conveyed by respondent no. 6 in favour of the father of the writ petitioner. On the same day, another deed of exchange (Annexure-6/A) was executed by father of the writ petitioner in favour of respondent no. 6 in respect of 5 kathas 3 dhurs of land. Both these deeds are the deeds of exchange specifically spelt out in those documents. While detailing the boundary of the land covered by those deeds of exchange, the name of respondent no. 5 figured as the boundary raiyat. This gave a cause to the respondent no. 5 (the preemptor) to seek reconveyence of the land covered by those deeds and a proceeding under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short " the Act") was instituted. The same was allowed by the original authority vide order dated 24.2.1989 (Annexure-3). Dissatisfied therewith, the petitioner filed appeal vide Appeal No. 38/1988-89. The Appellate Authority dismissed the appeal vide order dated 11.05.1992 (Annexure-2). The same was challenged before the Revisional Court by the petitioners which also came to be dismissed by the Resolution of the Board of Revenue dated 28th July, 1997 (Annexure-1). These orders have been challenged in the present writ petition by the petitioners.

Upon hearing the parties, this Court initially granted stay of the operation of the orders passed by the Ceiling Authorities on

23.7.1998 and issued notices to the respondents. The respondents appeared in the proceeding and after hearing the parties, the application was admitted to hearing on 17.5.1999 and the interim order passed earlier was directed to continue. That is how the matter is listed for final hearing and disposal.

Mr. Ahsan, learned Senior Counsel submitted that all the Courts below have completely erred in treating the deeds of exchange as sale deeds and found the claim of the preemptor (respondent no. 5) sustainable. He has placed the relevant findings recorded in the Appellate Court order (Annexure-2). Relying on the relevant provisions of the Act and the interpretation given thereto by a Division Bench of this Court in the case of ***Sheo Nath Singh vs. k. Abraham and Ors*** since reported in ***AIR 1973 Patna 242***, it has been argued that the finding are completely erroneous and bad in law. In his submission, the diverse terms which appear in sub-section (1) of Section 16 and the term 'any transfer' used in sub-section 3(1) of the Act have been given different meanings. Section 16(1) of the Act provides restriction on future acquisition by transfer etc. whereas sub-section (3) of Section 16 places a clog on transfer of land after the commencement of the Act. In order to buttress his submission, he has drawn attention of the Court to the proviso to sub-section 3(1) wherein a person claiming the right of preemption is required to deposit certain percentage of the purchased money. Similarly, in Rule 19 of the Rules framed thereunder, the word purchase money has been provided. In a case of exchange, the amount inserted therein as the consideration amount is only for the purpose of payment of stamp and registration fee etc.

In ***Sheo Nath Singh (supra)***, a Division Bench of this Court dealing precisely the similar submissions found substance in the submissions which have been advanced by Mr. Ahsan in support of the present writ petition. This Court may advantageously extract hereinbelow paragraph 3 of the report as under:-

> "3. It is not disputed that there was only one document of exchange dated the 1st of August, 1966, by which Ramnath Singh transferred plot No. 1048 to Bhairo Singh and Dudhnath Singh in exchange for plot No. 1042. It appears from the order of the Board of Revenue that the consideration money which was mentioned in the deed was Rs. 500/-. The learned Additional Member, Board of Revenue, has taken the view that the definition of ' transfer' as given in Section 5 of the Transfer of Property Act is no doubt wide enough to include transfer by exchange. But the word ' transfer' used in Section 16 (3) (i) of the Act means only transfer and not exchange, lease, mortgage or settlement. The view which the Board has taken appears to be correct for the reasons which I am going to presently state. Section 16 of the Act is headed " Restriction on Future Acquisition by Transfer" . Section 16 (1) of the Act reads as under:
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> " No person shall, after the commencement of this Act, either by himself or through any other persons, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area."

" Explanation :- For the purposes of this section ' transfer' does not include inheritance, bequest or gift."

It will be noticed that the acquisition of land by exchange, lease, mortgage, agreement or settlement have been used as distinct acquisitions and not covered by the acquisition of land by transfer. It will further be noticed that the acquisition of land by inheritance, bequest or gift has been excluded from the definition of the word " transfer" . In sub-section (2) of Section 16 also transactions of land by exchange, lease, mortgage, agreement or settlement have been used as distinct transactions from the transaction of transfer simpliciter. Sub-section (3) (i) of Section 16 of the Act reads as under :

" When any transfer of land is made after the commencement of this 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 per cent thereof is deposited in the prescribed manner within the said period."

The word ' transfer' in sub-section (3) (i) has to be read in the same sense as the word ' transfer' has been used in sub-sections (1) and (2) of Section 16 of the Act. A plain reading of sub-section (3) (i) of Section 16 shows that the only transaction of land which is covered by that sub-section is " transfer of land" as distinguished from " exchange of land" , " lease of land" , " mortgage of land" and " agreement or settlement of land" . It is, therefore, clear that the intention of the Legislature was to exclude the other transactions, such as exchange, lease, mortgage, agreement or settlement from the ambit of sub-section (3) of Section 16. The expression " purchase money" used in the proviso to sub-section (3) (i) of Section 16 also indicates that the transaction to which sub-section (3) (i) of Section 16 is applicable is a transaction of sale simpliciter and not any other

> transactions, referred to above including the transaction of exchange of land. It may be mentioned here that in the proviso to Section 16 (3) (ii) also the expression " purchase money" has been used."

Looking to the matter appearing from the record in the light of ratio laid down in ***Sheo Nath Singh (supra)***, this Court has no manner of doubt to hold that the Courts below erred in construing the two deeds (Annexures-6 and 6/1)) as the sale deeds although those deeds specifically mentioned the nature of the document as exchange (*badlain*).

The writ application is, thus, allowed. Consequently, the orders passed by the respondent D.C.L.R. (Annexure-3), the Collector (Annexure-2) and the Additional Member, Board of Revenue (Annexure-1) are quashed and set aside. No order as to cost(s).

(Kishore Kumar Mandal, J)

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