

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1646 of 1997

1. (a) Bhrigunath Pathak, s/o deceased petitioner
(b) Upendra Narayan Pathak s/o deceased petitioner
(c) Udit Narayan Pathak s/o deceased petitioner.
(d) Prem Ranjan Pathak s/o deceased petitioner
(e) Bhaiya Jee Pathak s/o deceased petitioner
(f) Ravi Shankar Pathak s/o deceased petitioner
(g) Gita Devi widow of late Gobardhan Pathak.

2. Jamuna Pathak

Both sons of late Bali Ram Pathak. Residents of Gayaghat, Police Station, Bahranpur, District Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, old Secretariat, Patna.
3. The Additional Collector, Buxar
4. The Land Reforms Deputy Collector, Buxar.
- 5.(i) Manoj Kuer s/o late Hridayanand Kuer
(ii) Vikash Kuer s/o late Haridayanand Kuer.
(iii) Pinku Kuer s/o late Shekhar Kuer
(iv) Santosh Kuer s/o late Shekhar Kuer
(v) Chandrajeet Kuer s/o late Shekhar Kuer
Resident of village Gayaghat, police Station Barahampur, District Buxar.
6. Radha Kishun Tiwari son of Shri Ram Tiwari, resident of village Chhotaki Nainajhore, Police Station Barahampur, District Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N.Choubey, Sr. Adv. Mr. Nagendra Dubey, Adv. Mr. Ashok Kumar Garg, Adv.
For the privateRespondent/s:		Mr. Rakesh Kumar Tiwari, Adv.
For the State	:	Mr.Ravi Verma, A.C. to G.P.4

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date : 08-10-2018

Heard Mr. Kamal Nayan Chaubey, learned Senior Counsel appearing with Mr. Ashok Kumar Garg, learned counsel for the petitioners, Mr. Ravi Verma, learned AC to GP 4 and counsel for the private respondent.



I have heard the learned counsel for the parties and I have perused the records.

The petitioner by way of this writ petition prays for issuance of writ in the nature of certiorari for quashing the order dated 25.10.1996 passed by the Member, Board of Revenue in Case No. 105 of 1996 whereby the revision filed by the petitioner has been dismissed and the order dated 08.03.1996 passed in Ceiling Appeal No. 163 of 1988-89 by the Additional Collector, Buxar as well as the order dated 28.05.1996 passed by the Land Reforms Deputy Collector, Buxar in Ceiling Case No. 22 of 1985-86 whereby the preemption application of petitioner under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Surplus Land) Act, 1961 (hereinafter referred as 'the Ceiling Act') was rejected, has been confirmed. The petitioner lost his challenge of preemption all through but perhaps it is the issue raised in the present writ petition which has persuaded this Court to admit the writ petition on 03.04.1997.

The facts that stands noted in the proceedings is that a sale was made by the land owner in favour of the respondent No.5 Pawdhar Kuer who has since deceased. The sale deed was executed on 16.11.1984 but was registered only on 29.01.1986. Within one month thereafter i.e within the period stipulated under



‘the Ceiling Act’, an application was filed by the petitioner under the Section 16(3) of the said Act on 26.02.1986. In between, the period of execution of the sale deed and its registration i.e 16.11.1984 and 29.01.1986, the respondent No. 5 executed a gift deed in favour of respondent No. 6 on 23.12.1985 which was registered only on 14.03.1986 but before its registration the preemption application had already been filed by the petitioner. It is claiming preemptory right as allowed under ‘the Ceiling Act’ and questioning the gift deed as a sham transaction that the proceeding was initiated by the writ petitioner under Section 16(3) of ‘the Ceiling Act’ but the statutory authorities i.e L.R.D.C has rejected the application and which order has been confirmed all through the stages of appeal as well as revision and hence this writ petition.

I have heard Mr. Chaubey, learned Senior counsel for the petitioner and Mr. Verma appearing on behalf of the State and I have perused the records.

The only issue which falls for consideration is whether the gift deed can be upheld as a genuine transaction or is a sham transaction executed with the sole purpose to defeat the preemption application. I do not have to ponder over the issue because this very issue came up for consideration before the



Supreme Court in a matter which has travelled from this State since reported in **2006(3) PLJR (SC)195 (Chandrika Singh L.R versus Arbind Kumar Singh)**.

In the said case a sale deed was executed with regard to a plot of land by the respondent Arbind Kumar Singh, in favour of one Paras Sah on 10.08.1983. On 12.10.1983 the said vendee Paras Sah executed a sale deed in respect of the land in favour of one Smt. Ghurla Kuer. The second sale had taken place even before the sale deed executed by Arvind Kumar Singh in favour of Paras Sah was registered, which registration took place only on 14.06.1984. On registration of the sale deed executed by the respondent Arbind Kumar Singh in favour of Paras Sah that an application was filed by Chandrika Singh (deceased) under Section 16(3) of 'the Ceiling Act' on 17.07.1984 i.e within one month thereafter. The sale deed which had been executed by the purchaser Paras Sah in favour of Hurelay Kuer on 12.10.1983 came to be registered only on 10.03.1984 i.e much after the preemption application was filed.

The issue which fell for consideration before the Court was whether the sale made by the purchaser Paras Sah in favour of a third party even before the sale deed executed in his favour by the land owner, could be registered, was a valid transaction. Having



lost the challenge all through that the preemptor approached the Supreme Court and the opinion expressed on the issue which is identical to the issue raised in the present writ petition draws the contest in favour of the writ petitioner. The opinion recorded at paragraphs 13 to 15 would conclude the issue raised by the writ petitioner before this Court in his favour and runs under:

“13. As noted herein before, the first sale deed was executed on 10th of August, 1983 in favour of Paras Sah, which was registered on 14th of June, 1984. Therefore, it cannot be disputed that the sale deed registered on 14th of June, 1984 could be pre-empted only within three months from 14th of June, 1984. Admittedly, in this case, the application for pre-emption was filed on 17th of July, 1984 i.e. well within the limitation period of 3 months. At the same time, it is also not in dispute that the second sale deed, which was executed by Paras Sah in favour of Ghurla Kuer for a consideration of Rs.4000/- was registered on 31st of August, 1984, that is, after the registration of the first sale deed and after the pre-emption application, under Section 16(3) of the Act, was filed by the appellant, on 17th of July, 1984. Further, under Section 16(2) of the Act, a sale is complete only when the document of transfer is registered and unless the registration is complete under Section 60 of the Registration Act, the transfer of the land in question would still be inchoate. From a plain reading of Section 16(3) of the Act it is clear that a pre-emptor can only be permitted to file the pre-emption application within 3 months from the date of registration of transfer deed. Therefore, the right to file the pre-emption application under Section 16(3) of the Act accrues only when the registration of the document is completed. In *Radhakisan L. Toshniwal vs. Shridhar*, [(1961) 1 SCR 248], this Court held that where a statute provides for a right of pre-emption, it will accrue only when the transfer of the land takes place and such transfer is not complete before the deed



is registered. Accordingly, this Court held that an application for pre-emption filed before the sale deed was registered, would be pre-mature. This view was appreciated again by this Court in Ram Saran Lal vs. MST. Domini Kuer [(1962) 2 SCR 474]. Further, in Hiralal Agrawal vs. Rampadarath Singh & Ors., [AIR 1969 SC 244], Shelat, J. (as his Lordship then was), clearly observed that under Section 16(2) and (3) of the Act, no transfer takes place unless the deed is registered. Registration is complete when the certificate under the provisions of the Registration Act is issued. That being the position, we are of the view that the right of re-conveyance accrues to the pre-emptor only on the date of the completion of the registration of the transfer deed and an application for pre-emption under Section 16(3) of the Act filed before such date would be pre-mature. Therefore, we hold that the pre-emptor, Chandrika Singh, appellant herein, was entitled to file the pre-emption application against Paras Sah, only after the first sale deed was registered on 14th June 1984 and not before that date. It is clear that the registration of the sale deed executed in favour of Smt. Ghurla Kuer by Paras Sah was not complete and effective, for want of registration, when the application for pre-emption was filed by Chandrika Singh against Paras Sah. Accordingly, we do not find any reason to hold that the application for pre-emption, filed by Chandrika Singh could not be maintained against Paras Sah, the first transferee.

14. For the reasons aforesaid, it would not be necessary for us to go into the question whether the second sale was a sham transaction or not.

15. Accordingly, we have no hesitation in our mind to hold that a sale deed executed by Paras Sah in favour of Smt. Ghurla Kuer prior to the registration of the first sale deed, cannot negate the right of the pre-emptor to proceed against Paras Sah under Section 16(3) of the Act as, it is an admitted position in this case that the second sale deed was not registered at the time the pre-emption application was filed by Chandrika Singh against the first transferee, Paras Sah.



The Supreme Court while adjudicating upon an identical situation has held at paragraph 15 that the subsequent sale deed executed by the purchaser Paras Sah in favour of the third party Smt. Ghurla Kuer even prior to the registration of the sale deed in his favour by the land owner could not negate the right of the preemptor to proceed against the purchaser Paras Sah under Section 16(3) of 'the Ceiling Act'.

Identical situation exists in the present case and which is confirmed from the dates which I have already given above for whereas the sale deed was executed in favour of the respondent No. 5 on 16.11.1984, its registration took place on 29.01.1986 and within one month thereafter the writ petitioners filed their preemption application under Section 16(3) of 'the Ceiling Act' on 26.02.1986. No doubt in between this period a gift deed was executed by the purchaser respondent No. 5 in favour of the respondent No. 6 on 26.12.1985 but its registration took place on 14.03.1986 i.e. after the date of filing of the preemption application by the petitioner on 26.02.1986 and in the words of the Supreme Court this subsequent transaction could not defeat the right of the preemption invoked under Section 16(3) of 'the Ceiling Act'.



For the reasons discussed and in view of the opinion expressed by the Supreme Court in the case of **Chandrika Singh** (supra) the writ petition has to be allowed and accordingly, the orders impugned dated 25.10.1996 passed by the Member, Board of Revenue in Case No. 105 of 1996 whereby the revision filed by the petitioner has been dismissed together with the order dated 08.03.1996 passed in Ceiling Appeal No. 163 of 1988-89 by the Additional Collector, Buxar as well as the order dated 28.05.1996 passed by the Land Reforms Deputy Collector, Buxar in Ceiling Case No. 22 of 1985-86 whereby the preemption application of petitioner under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Surplus Land) Act, 1961 was rejected, are quashed and set aside. The preemption application filed by the petitioner under Section 16(3) of 'the Ceiling Act' is allowed. The consequences shall follow and considering the delay, the statutory authority shall move expeditiously in the matter.

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

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	NA

