

CASE NO.:
Appeal (civil) 5645 of 2001

PETITIONER:
BIBI SALMA KHATOON

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT: 21/08/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(2) SCR 22

The following Order of the Court was delivered : Leave is granted.

The appellant, an unsuccessful applicant under Section 16(3) of the Bihar Land Reforms Act, 1961 (for short 'the Act') claiming right of preemption in respect of the land in dispute, is in appeal against the judgment and order dated 17th September, 1997 of the High Court of Judicature at Patna in Letters Patent Appeal No. 263 of 1995.

The short question that arises for consideration in this appeal is whether the application under Section 16(3) of the Act filed by the appellant, is within limitation.

The land in dispute in this appeal was sold by respondent No. 6 in favour of respondent No. 5 and the sale deed was registered on January 30, 1988. The appellant filed the said application for transfer of the land in dispute in his favour to enforce right of pre-emption before the Land Reforms Deputy Collector, Khagaria claiming to be an adjoining raiyat, on 30th April, 1988. That application was allowed by the Assistant Collector on 16th August, 1988. The case went through several vicissitudes and ultimately, the appeal filed by the 5th respondent was allowed by the Additional Collector, Khagaria on August 13, 1990. Dissatisfied with the said order of the Collector the appellant approached the Board of Revenue in revision but it was dismissed on January 31, 1994. The appellant assailed the correctness of the order dated January 31, 1994 before the High Court in CWJC No. 3720 of 1994. The learned Single Judge of the High Court of Patna dismissed the writ petition. He then agitated the matter in Letters Patent Appeal which was dismissed on September 17, 1997. It is against that order that the appellant is before us in this appeal. Mr. Abhay Prakash Sahay, learned counsel appearing for the appellant, contends that the application under Section 16(3) of the Act was filed within the period of limitation and that the courts below as well as the High Court erred in coming to the conclusion that the application was barred by limitation. Mr. Prem Sunder Jha learned counsel appearing for the 5th respondent contends that the High Court has rightly held that the application is beyond limitation and that the other requirements of Section 16 have not been complied with.

To appreciate the contention of the learned counsel, we shall refer to Section 16(3) of the Act which is relevant for our purpose and which reads as under :

"16(3)(i) 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 documents of 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.

(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 transferor 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 XXI, Rule 34 of the Code of Civil Procedure, 1908 (IV of 1908), shall be, so far as may be, followed." From a perusal of clause (i) of sub-section (3) of Section 16 of the Act it is clear that after April 19, 1962 if any land is transferred to any person other than a co-sharer or a raiyat of adjoining land the provision confers a right in favour of a co-sharer of the transferor or a raiyat of the adjoining land to have that land transferred in his favour on the terms and conditions mentioned in the sale deed subject to the following two conditions. The first condition is that he shall make an application for the said relief in the prescribed manner before the Collector within three months of the date of registration of the document of transfer. The second condition is that he shall deposit the purchase money together with a sum equal to ten per cent thereof, in prescribed manner, within the said period of three months. Clauses (ii) and (iii) prescribe the procedure to be followed on compliance of requirements of clause (i).

Here we are concerned with compliance of requirement of making application within the prescribed period of three months. The question arises, what is meant by the word 'month'. Sub-section (34) of Section 4 of the Bihar and Orissa General Clauses Act, 1917 defines the word 'month' to mean a month reckoned according to the British Calendar. This means Gregorian Calendar-January, February.....etc. Mr. Jha has drawn our attention to Section 11 of the said Act of 1917 to point out that when word 'from' is used the first in the series of days or any other period of time has to be excluded and when the word 'to' is used the last in a series of days or any other period of time has to be included but in this case the word 'of' is used so that section will not apply. A perusal of Section 11 shows it is an aid for drafting a provision rather than for interpreting the provision of the Act. Be that as it may, since the Act does not expressly exclude Section 4 to 14 of the Limitation Act they apply to application under Section 16(3) of the Act. Therefore, the date from which the limitation commences has to be excluded in computing the period of limitation of three months. In Halsbury's Law of England, Fourth Edition, para 211 method of computation of month is given as follows "para 211 : Calendar month running from arbitrary date-when the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month.

If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or not a leap year."

Thus, computed the application filed by the appellant on April 30, 1988 is within limitation-a period of three months of the date of the registered sale deed dated January 30, 1988. In this view of the matter, we are unable to sustain the order under challenge. We set aside the impugned order, restore the second appeal and remit the case to High Court for disposal in accordance with law.

The appeal is accordingly allowed with costs.

JUDIS