

PETITIONER:
RAMJI SHARMA @ RAMJI BANU (DEAD) BY L.RS.

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 19/09/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
MAJMUDAR S.B. (J)

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal has been filed for setting aside the judgment of the High Court, dismissing the application under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) filed on behalf of the appellants, claiming retransfer of the lands which had been transferred by respondent No. 5 in favour of respondent No.7 through the registered sale deed dated 30.12.1969. The respondent No.7 by the aforesaid sale deed purchased 5 kathas of land of survey plot No. 610 and 6 kathas 10 dhurs of land of survey plot No. 614 from respondent No. 5 for a consideration amount of Rs. 4,600/-. The purchase had been made for construction of house in Mohalla Sahjampur Aderkila within the town of Hajipur.

An application under sub-section (3) of Section 16 of the Act was filed on behalf of the appellants before the Deputy Collector, Land Reforms, for a direction that respondent No.7, the transferee be directed to convey the lands purchased by him by executing and registering a deed of transfer in favour of the appellants in terms of the said sub-section (3) of Section 16. That application was dismissed by the Deputy Collector, Land Reforms, on the ground that the lands which had been transferred shall not be deemed to be the lands within the meaning of the Act, as such the provisions thereof shall not be applicable. However, an appeal being filed on behalf of the appellants, was allowed by the collector. The Member, Board of Revenue, dismissed the Revision Application, filed on behalf of Respondent No. 7. Thereafter, a writ petition was filed on behalf of Respondent No. 7, for quashing the orders passed by the Collector and the Member, Board of Revenue before to the High Court. The High Court by the Collector and the Member, Board of Revenue, on a finding that as the lands which had been transferred were within the town of Hajipur and were urban in nature, the provisions of the Act shall not be applicable including sub-section (3) of Section 16

therefore. This finding of the High Court is being questioned in this appeal.

The preamble of the Act says that it is an Act to provide for fixation of ceiling, restriction on sub-letting and resumption by certain raiyats, for personal cultivation of land, acquisition of status of raiyat by certain under raiyats and acquisition of surplus land by the State in the State of Bihar and matters connected therewith. Section 2(f) defines land:

"(f) "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an of even land perennially submerged under water) or the homestead of a land-holder;

Explanation I.- "Homestead" means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

Explanation II. -Land perennially submerged under water shall not include land submerged in the bed of a river."

Section 2(g) defines 'land holder':

"(g) 'land holder' means a family as defined in clause (ee) holding land as raiyat or as under-raiyat or a mortgagee of land in possession or holding land permanently settled by Government or lessee of land not resumable by Government."

On a plain reading of the definition of land it means which is used or capable of being used for agriculture or horticulture or for the homestead of a land - holder.

Explanation I, specifies what is meant by homestead which shall include dwelling house for the purpose of living or for the purpose of letting out on rent together with agriculture or horticulture. Section 4 prescribes the ceiling area of the land which a land holder can hold under the provisions of the Act. The other provisions relate to fixation of such ceiling and declaration of the surplus land which shall vest in the State. Sub-section (1) of Section 16 provides that no person shall, after, the commencement of the Act, either by himself or through any other person, 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. Sub-section (3) of Section 16 provides:

"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, with in three months of the date of

registration of the document 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:

Provide that where the application is rejected, the co-sharer or the raiyat, as land and possession thereof shall be restored to the transferer and the transferee shall be entitled to be paid a sum equal to ten per cent 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 refuse 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."

In view of Sub-section (3) of Section 16, whenever any transfer of land is made to any person other than the 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 the period prescribed therein to make an application before the Collector for the transfer of the land to him on the terms and conditions contained in the said deed. He has to comply with the other requirements of the said Section by way of deposit of purchase money along with sum equal to 10% thereof.

The question which is to be answered is as to whether the expression land as defined in the Act will include not only the land which are being used or capable of being used for agriculture or horticulture purposes but also land within the urban areas meant for building purposes. It is well known that in and around the towns and urban areas at one point of time most of the lands were used for agriculture or horticulture purposes. With growth of population and development activities slowly-slowly such agricultural land are converted to use which are non-agricultural. Many colonies have been developed by the side of the old cities which at one point of time were

agricultural fields and crops used to be grown. But with passes of time and cry for more plots of land for construction of buildings they lost their original character and purpose. It appears that the framers of the Act were quite conscious of this aspect of the matter. that is why while defining 'land' they laid much emphasis in respect of the nature of use such land was being put by saying that it meant land which is used or capable of being put by saying that it meant land which used or capable of being used for agriculture or horticulture or the homestead of the land-holder. It need not be pointed out that the sole object of the Act is to put ceiling on the land held by land-holders for agriculture or horticulture purposes and to declare the areas beyond the ceiling as surplus which shall vest in the State Government. In this background neither it can be assumed not it can be held that the frames of the Act had in mind even the lands which are in the heart of the cities meant for construction of buildings. It is a matter of common knowledge that even in areas which are completely urban in nature or even in colony some plots are lying vacant as no constructions have been made over the same for one reason or the other including financial constraint. Till constructions are made they are being used for growing some crops or fruits. But can be said that such plots which are meant for building purposes shall be deemed to be land within the meaning of Section 2(f) of the Act? According to us, the answer is in negative. Whenever an application under Sub-Section 16 is filed, which is in respect of a land within the urban area, the authorities or the High Court concerned should first examine which is the primary object for which such land was being used or is capable of being used. If it found that the land was being retained by the transferor or was being transferred to another person for a purpose and object which is not connected with agriculture then an application under sub-section (3) of Section 16 should not be entertained. On the other hand, if the authorities or the High Court are satisfied that the land which has been transferred is fully covered by the definition of land as given under Section 2(f) then provisions of the Act have to be applied if applicant was entitled for retransfer in his favour from the transferee on the same terms and conditions. A full Bench of the Patna High Court in the case of Fakir Mohammad vs. Salahuddin & Ors., Air 1975 PATNA 119, presided over by N.L. Untwalia C.J. (as he then was) examined the scope of expression 'land' as defined in Section 2 (f) of Act. It was observed:

"The consensus of opinion - and, as I shall presently show, there is no conflict in any of the decisions - is that a part piece of land belonging to a raiyat, an agriculturist, which is his homestead on which there is no dwelling house or any of the things as mentioned in the Explanation, is not a land covered by the Act. It has been further pointed out that land fit for building purposes not connected with agriculture situated ordinarily and agriculture situated ordinarily and generally town or bazaar areas, to which are applicable the provisions of the Transfer of Property act. is not the homestead of a land-holder to

make it a land within the meaning of Section 2(f).

(emphasis supplied)

We are in agreement with the view expressed in the aforesaid judgment of the Full Bench.

So far the facts of the present case are concerned, the High Court has rejected the contention that the land is question can be held to be land within the meaning of Section 2(f) merely because in the Kathian Entry it had been recorded as Bhit Land. The High Court in the impugned order has observed:

"It goes without saying that all the urban lands at some at some point of time or the agricultural operations were carried on. There fore, mere description of the land as a Bhit land by the survey authorities would not be a conclusive proof that the land was agricultural in nature. The fast development and urbanisation of the town Hazipur which has very recently been made a district, cannot be lost sight of. Therefore, I, would accept the second contention of Mr. Krishna Prakash Sinha and hold that the pre-emptor has not succeed in establishing his case that the disputed land was a land within the meaning of the provisions of the Act to which the provisions of section 16 (3) would apply."

In view of the findings recorded by the High court that the land which have been transferred were in the town of Hajipur and in the urban area, the application filed under sub-section (3) of Section 16 has been rightly dismissed. Accordingly, the appeal fails and it is dismissed. There shall be no orders as to cost.

The appellant shall be permitted to withdraw the amount which has been deposited on behalf of the appellant in connection with in connection with the application under sub-section (3) of section 16 of the Act. The refund shall be made within three months from the date of the filing the application on behalf of the appellant.