

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 110/2009

Narbdeshwar Tiwary
Vrs.
Upendra Tiwary & ors.
ORDER

25.02.2016 - The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 3/1988 on 17.09.2009.

The brief facts of the case are that the disputed piece of land measuring 5 katha 18 dhur, appertaining to khata No. 34 R.S plot No. 1132 situated in Mauza Kuari Kharge, P.S. Amnour, Dist-Saran was transferred through registered sale deed dt. 08.09.77 by Rameshwar Tiwary and Hari Narain Tiwary both sons Late Nag Narain Tiwary of the same village, in favour of one Narbdeshwar Tiwary S/o Late Mahesh Tiwary. Thereafter, one Vidya Narain Tiwary, father of the present respondent No.1, Upendra Tiwary filed a pre-emption case before DCLR, Chapra Sadar vide pre-emption case No. 50/1977-78. During the proceeding of this case before DCLR, one Nanhaku Pandey S/o Late Sheo Nandan Pandey filed an affidavit petition claiming himself to be the real purchaser of the said land and termed the said Narbdeshwar Tiwary as Benamidar. But the said pre-emption case was allowed in favour of the pre-emptor vide order dt. 23.1.1987. Thereafter an appeal was filed vide L.C. Appeal No. 3/88 before Addl. Collector, Saran and the said appeal was allowed. This led to filing of a revision case before Board of Revenue, Patna vide revision case No. 17/1989 which was subsequently disallowed by confirming the order of Addl. Collector. Then the present respondent No. 1 Upendra Tiwary preferred a writ case vide CWJC No. 1998/1991 before Hon'ble High Court wherein the order passed by the Addl. Member, Board of Revenue Patna, dt. 13.02.1991 was under challenge and later on the said writ case was disposed of vide order dt. 20.01.2009 wherein the order under challenge was set aside and the matter was remitted back in the Court of Addl. Collector, Saran with a direction for passing a fresh order in accordance with law. This led to revival of the L.C. Appeal No. 3/1988 before Addl. Collector and who after issuing fresh notice to the parties, heard the matter and finally vide order dt. 17.09.2009 held that the earlier order passed by DCLR, Chapra Sadar on 23.12.1987 in L.C. case No. 50/1977-78 to be a legally valid order and accordingly expressed his inability to make any interference in the said order and allowed the appeal.

Feeling aggrieved by the said order, the present petitioner has preferred this revision case before this Court.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the present petitioner has preferred this revision petition before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner, at the very outset of his argument, submitted briefly about the whole course of events leading to coming up of this case before this Court after a prolonged litigation and also termed this case to be a peculiar case for the reason that even after more than three decades of litigation the matter has not yet been resolved. He further argued that the only contentious issue involved in this case is to decide as to whether the present petitioner who is the purchaser of the vended land against whom pre-emption can be allowed or not as the said purchase was done as "Benami purchase". He further submitted that the learned Court below ignored the observation made by the Hon'ble High Court while passing the order by not dealing with the issue as to whether the alleged transfer was Benami or not. He also argued that the Court should have held enquiry in full by taking evidence of both parties. He also argued that the Court below should not have given weightage to the subsequent statement of Nanhaku Pandey by ignoring his previous statement made through affidavit. He also submitted that any transaction made by Upendra Tiwary alleged vendee to a third person during pendency of the case ought to not have been favoured by the Court and such transaction of sale made during pendency has no legal value. He lastly submitted that the impugned order is fit to be set aside as the real issue of Benamidar has not been considered properly by the learned Court below.

The learned senior counsel appearing on behalf of the respondent No.1, on the other hand vehemently opposing the submission made by the learned counsel for

the petitioner and submitted that the said Nanhaku Pandey as respondent No.07 in the CWJC No. 1998/1991 had filed counter-affidavit to the effect that the land claimed by the petitioner as his Benamidar is absolutely incorrect and denied strongly and in that view of the matter the present respondent No.1 has every right to claim pre-emption and his said claim has been rightly decided by the DCLR. He lastly prayed that as the present revision petition being devoid of any merit is fit to be dismissed out righting.

Considering the facts and circumstances of the case, material available on records, respective arguments made by the learned counsel for the parties and on perusal of the impugned order it appears that the dispute relating to Benami purchaser is the only seriously disputed fact which has not been settled so far and the parties are still engaged in prolonged litigation. It is to be noted that the learned Addl. Collector heard the parties at length a fresh after the case has been remitted back to him by the Hon'ble High Court and his final findings read as follows:

" अपीलार्थी का यह कथन है कि ये प्रश्नगत भूमि के बेनामादार है तथा वास्तविक क्रेता नन्हकू पाण्डेय है। नन्हकू पाण्डेय द्वारा दिये गये शपथ पत्र से इस तथ्य की पुष्टि होती है, मेरे विचार से तर्क संगत प्रतीत नहीं होता है। नन्हकू पाण्डेय क्यों नवदिवर तिवारी (अपीलार्थी) के नाम से प्रश्नगत भूमि क्रय किए इसका कोई युक्तिसंगत आधार एवं औचित्य स्पष्ट नहीं हो पा रहा है। नन्हकू पाण्डेय का शपथ पत्र जिसकी यथार्थता पर ही निम्न न्यायालय से लेकर माननीय उच्च न्यायालय तक प्रश्नचिन्ह लगते आ रहे हैं, के आधार पर प्रश्नगत अंतरण को बेनामी मानकर उत्तरवादी को अग्रक्रयधिकार के हक से वंचित किया जाना न्यायोचित नहीं होगा। अतः मेरे विचार से उत्तरवादी सं०-1 के पिता विद्यानारायण तिवारी का नाम प्रश्नगत दस्तावेज के उत्तरी तरफ चौहदी में दर्ज है के आधार पर इनका अग्रक्रयधिकार का दावा स्वीकार्य है। इस प्रकार विद्वान भूमि सुधार उप समाहर्ता, छपरा द्वारा भू.दबबन्दी वाद सं०-50/77-78 में दिनांक 23.12.87 को पारित आदेश कानूनतः सही है। इसमें हस्तक्षेप की आवश्यकता नहीं है। अतः निम्न न्यायालय द्वारा पारित उक्त आदेश को संपुष्ट करते हुए अपील आवेदन पत्र खारिज किया जाता है। "

Form the aforesaid findings of the learned Addl. Collector it is seen that the said finding is not based on any sound reasoning rather the same appears to have been derived on the materials available on the record. However the learned counsel for the petitioner disputes the said findings on the ground that the said disputed question of Benamidar has not been decided by making any full enquiry by taking evidence. I find some merit in this claim as no reason has been assigned for arriving at the same findings. The counter-affidavit filed by the said Benamidar can not be discarded prima-facie as the same has been filed before the Hon'ble High Court and the Hon'ble High Court has also taken cognizance over the contents of the said counter-affidavit and finding on its bearing in this case directed the appellate Court to make enquiry into the whole issue of said seriously disputed fact relating to Benamidar.

Thus, for the aforementioned reasons, the impugned order of Addl. Collector, Saran dt. 17.09.2009 is set aside and the matter is remitted back to the Addl. Collector, Saran for passing a fresh order complying with the observations and direction contained in the order of Hon'ble High Court preferably within three months from the date of production or receipt of the copy of this order as abnormal delay has already been caused in this case.

With the aforementioned observations and directions, the instant revision petition is disposed of.

Dictated and corrected by me.

Commissioner,
Saran Division, Chapra

25.2.16
Commissioner
Saran Division, Chapra