

Supreme Court of India

Gajadhar Prasad Choudhary vs State Of Bihar on 7 January, 1993

Equivalent citations: 1993 SCC, Supl. (1) 114

Author: K Singh

Bench: Kuldeep Singh (J)

PETITIONER:

GAJADHAR PRASAD CHOUDHARY

Vs.

RESPONDENT:

STATE OF BIHAR

DATE OF JUDGMENT 07/01/1993

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1993 SCC Supl. (1) 114

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The appellants purchased 11 kathas 5 dhuras of land in District Muzaffarpur by registered sale deeds dated August 12, 1971. The Parco Vyapar Mandal Sahyog Samiti Ltd. (the Samiti) which is a marketing and credit cooperative institution, filed an application under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (the Act) claiming preemption as being adjoining raiyat to the land transferred. The Deputy Collector, the Additional Collector and the Board of Revenue upheld the claim of preemption. The High Court dismissed the writ petitions filed by the appellants. These appeals via special leave are against the judgment of the authorities under the Act as upheld by the High Court.

2. We have heard learned counsel for the parties. Section 2(k) of the Act which defines raiyat is as under:

"(k) 'raiyat' means primarily a person who has acquired a right to hold for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners, and includes also the successors-in- interest or persons who have acquired such a right and includes, in the district of Santal Parganas, a village headman in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of 1908), applies, a Mundari Khunt- kattidar or a Bhuinhar. "

Section 16(3) of the Act is reproduced hereunder:

"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 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."

The Deputy Collector under the Act allowed the application of the Samiti on the following reasoning:

"I have not been able to conduct local inquiry but from the activity of the Vyapar Mandal, it appears that actually it operates for the improvement of agriculture by supplying seeds, fertilizer, manures, insecticides, implements and it also serves as Sahan house for pledging the produce of agriculturists. If a raiyat engaged in the cultivation is considered as raiyat, then the institution which is engaged in procurement and supply of seeds, manures, insecticides, agricultural implements etc. for the benefit and improvement of agriculturists should also be treated as a raiyat within the definition of the Act and there does not appear to be any bar against it. Besides, the point that the Vyapar Mandal has been doing cultivation also has not been contravened (sic controvert) by the O.Ps. properly."

The provisions of the Act quoted above make it clear that a raiyat is a person who holds the land for self-cultivation or in the manner prescribed under Section 2(k) of the Act. Only a raiyat holding land adjoining to the land transferred has a right of preemption under Section 16(3) of the Act. There is no material on the record to show that the Samiti itself is cultivating the land or is getting the land cultivated in the manner prescribed under Section 2(k) of the Act. Because the Samiti is engaged in the transactions which are incidental to agriculture it has been treated as raiyat within the ambit of Sections 2(k) and 16(3) of the Act. Be that as it may all the authorities under the Act have given concurrent finding that the Samiti was engaged in the cultivation of land. The said finding has been upheld by the High Court. We have no option but to agree with the finding of fact reached by the courts below.

3. In the facts and circumstances of this case, notwithstanding the findings of the courts below, we are not inclined to grant benefit of Section 16(3) of the Act to the respondent-Samiti. The appellants who are small land owners are in possession of the land since 1971. It would not be in the interest of justice to dispossess them after more than two decades specially when the respondent-Samiti is a cooperative institution and is not in active cultivation of the land. In order to do complete justice between the parties we, by invoking Our constitutional jurisdiction, set aside the judgment of the High Court and courts below and dismiss the application of the respondent-Samiti under Section 16(3) of the Act. The appeals are allowed with no order as to costs.