SHRI GOKUL MAHTO

v.

THE STATE BANK OF BIHAR AND ORS.

FEBRUARY 24, 1999

[M. JAGANNADHA RAO AND S.N. PHUKAN, JJ.]

Bihar Land Reforms Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961; Sections 16(1) Explanation 16(3), 17 and 18.

Pre-emption—Neighbour's right of pre-emption—Applicability to land received in gift—Land gifted to fifth respondent by third respondent (her brother) on 11.5.1982—Appellant a neighbour in respect of the said property claimed a right of pre-emption under Section 16(3)—Application rejected by Board of Revenue and High Court on the ground that Section 16(3) does not apply to transfers by way of gift—Appeal before Supreme Court—Held view taken by Board of Revenue and High Court is right—Explanation to Section 16(1) clearly excludes from the purview of the entire Section 16 transfers by way of inheritance, bequest or gift.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6974 of 1994.

From the Judgment and Order dated 22.3.94 of the Patna High Court in C.W.J.C. No. 3314 of 1987.

R.P. Kathuria, C.S. Ashri and Ms. Kailash Golani for the Appellant.

Ms. Naresh Bakshi (NP) for the Respondents.

The following Order of the Court was delivered :

This is an appeal by the appellant from the judgment of the Patna High Court dated 22.3.1994 in Writ Petition No. CWJC 3314/87. By that judgment the High Court dismissed the writ petition, filed by the appellant, questioning the orders of the Board of Revenue dated 19.5.1987, allowing the revision filed by the respondent, and setting aside the orders passed by the authorities subordinate to the Board.

A The point arises under Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land), Act, 1961. The appellant is a neighbour in respect of the property which was gifted to the fifth respondent by her brother, the third respondent, on 11.5.1982. The appellant claimed a right of pre-emption under Sub-clause (3) of Section 16 of the abovesaid Act.
B

Learned counsel for the appellant has contended that gifts do come within Sub-clause (3) of Section 16 in spite of the Explanation added below Sub-clause (1) of Section 16. According to counsel, the Explanation which excludes 'gifts' from the purview of Section (16) must be confined to
C Sub-clause (1) of Section (16) only and cannot be applied for purposes of Sub-clause (3) of Section (16), which deals with the right of pre-emption of the neighbour.

Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land), Act 1961 reads as follows :
D

> *16. Restriction on future acquisition by transfer, etc.* - (1) No person shall after the commencement of this 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
> E aggregate the ceiling area.
>
> *Explanation :* For the purposes of this section 'transfer' does not include inheritance, bequest or gift.
>
> F (2)(i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Indian Registration Act, 1908 (XVII of 1908),
> G as to the total area of land held by him by himself or through any other person anywhere in the State.
>
> (ii) No such registering authority shall register any document evidencing any transaction if, from the declaration made under clause (i), it appears that the transaction has been effected in
> H contravention of the provision of sub-section) (1).

(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeath or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVII of 1908). A

Explanation - Nothing in this sub-section shall be deemed to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement. B

(3)(i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer of a raiyat or 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 : C D

Provided that no such application shall be entertained by the Collector unless the purchase - money together with a sum equal to 10% 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: E

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 transferee and transferee shall be entitled to be paid a sum equal to 10% of the purchase-money out of the deposit made under clause (i). F

(iii) If the application is allowed, the Collector by an order direct the transferee to convey the land in favour of 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 21, rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed. G H

A The Explanation, below sub-clause 1 of Section 16, it will be noticed, clearly excludes from the purview of the *entire Section* 16 transfers by way of inheritance, bequest or gift. This is clear from the language used in the Explanation set out above which clearly uses the words "for the purposes of the Section". The said words would therefore mean that gifts are excluded even from the purview of all the Sub-sections of Section (16) B including sub-clause 3 of Section 16. We, accordingly, reject the contention of the learned counsel for the appellant.

Further, it appears that there is a clear legislative scheme in Section (16) and (17) on the one hand and Section 18 on the other. While Section C 18 deals specifically with the transfer by way of inheritance, bequest or gift, Section 16 and 17 deal with transfers other than those by inheritance, bequest or gift. Hence, Sub-clause (3) of Section 16 cannot apply to cases of gift.

D It is, therefore, obvious that the right of pre-emption, as claimed by the appellant, as a neighbour is not attracted to the case of the gift by the third respondent in favour of the fifth respondent. The facts of the case show that the gift made on 11.5.1982 by the third respondent was to his own sister who is the fifth respondent and the gift was for the purpose of E construction of a house.

Pleadings of the petition before the primary authority do not make any allegation that the gift was benami or a sham document. There is no doubt some discussion before the appellate authority as to whether the document is benami or sham, but in our opinion, it was not necessary for F the said authorities to go into this question as there was no pleading before the primary authority.

We are of the view that the Board of Revenue and the High Court were right in disallowing the application of the appellant for pre-emption G on the ground that Sub-clause (3) of Section (16) does not apply to transfers by way of gift. The appeal is accordingly dismissed. In the circumstances, there will be no order as to costs.

T.N.A. Appeal dismissed.