IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4200 of 1990

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1(a) Bhupindar Rai S/o Late Ram Parichhan Rai
1(b) Maha Sunder Devi D/o Late Ram Parichhan Rai
1(c) Reta Devi D/o Late Ram Parichhan Rai
1(d) Mala Devi W/o Late Birendra Rai
1(e)Nilu Kumari D/o Late Ram Parichhan Rai
1(f) Dhiraj Kumar S/o Late Ram Parichhan Rai
1(g) Guddu Kumar S/o Late Ram Parichhan Rai
2. Jagdish Rai, residents of village, Panapur Patar, Panchayat Secretary Mahua district Vaishali

.... Petitioners

Versus

1. The Member Board of Revenue Bihar, Patna
2. The Additional Collector, Vaishali at Hajipur
3. The Deputy Collector, Land Reforms, Hajipur

4(a) Malhari Devi W/o Late Ram Briksh Rai
4(b) Mina Devi D/o Late Ram Briksh Rai
4(c)Sita Devi D/o Late Ram Briksh Rai
5.Bhola Rai son of Late Bhonu Rai
6.Dharkhan Singh S/o Raunak Singh, resident of village Mirpur Patar PS Mahua district Vaishali.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5925 of 1991

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Malhari Devi & Ors.

.... Petitioners

Versus

The State of Bihar & Ors.

.... Respondents

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Appearance :
(In CWJC No. 4200 of 1990)
For the Petitioners : Mr.
For the State : Mr. Rajesh Kumar, AC to AAG 3
For the respondents 4 & 5:Mr. Manindra Kumar
Mr. Anurag Pandey
(In CWJC No. 5925 of 1991)
For the Petitioners : Mr. Manindra Kumar
Mr. Anurag Pandey
For the Respondents: Mr. Mahboob Ashraf, AC to SC 27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 05-02-2015

These two writ applications filed under Article 226 of the Constitution of India arise out of the same order dated 26.05.1990 passed by learned Member, Board of Revenue, Bihar, Patna in revision case No. 286 of 1989 and, therefore, they have been taken up together and are being disposed of jointly by the present common judgement.

2. CWJC No. 4200 of 1990 has been filed seeking quashing of the said order dated 26.05.1990 whereby, learned Member, Board of Revenue has set aside the order of the Deputy Collector, Land Reforms, Vaishali at Hajipur (in short DCLR) dated 06.08.1984 (annexure-3) and order dated 23.05.1989 passed by the Additional Collector, Vaishali at Hajipur. CWJC No. 5925 of 1991, on the other hand, has been filed for implementation of the said order dated 26.05.1990 whereby, learned Member, Board of Revenue upheld the claim of preemption with respect to land in question. Apparently, private respondents of CWJC No. 4200 of 1990 are petitioners in CWJC No. 5925 of 1991 and vice versa.

3. There is no representation on behalf of the petitioners in CWJC No. 4200 of 1990 and the private respondents in CWJC No. 5925 of 1991.

4. I have heard learned counsel appearing on behalf of the respondents in first case and the petitioners in

the second case. I have also heard learned counsel representing the State of Bihar in both the cases.

5. From the facts pleaded in the writ applications as well as other pleadings including counter affidavits and rejoinder affidavits, it would appear that the private respondents of CWJC No. 4200 of 1990 filed an application under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) claiming that the plots in question, i.e., survey plot Nos. 378, 379 and 380 appertaining to Khata No. 76 of village Panapur belonged to two brothers Sitaram Singh and Dharkhan Singh (respondent No.6 in CWJC No. No. 4200 of 1990). The said Dharkhan Singh transferred his share of land covering area of 11 Katha in favour of Ram Parichhan Rai and Jagdish Rai through registered sale deed dated 23.11.1983. They claimed that they were boundary raiyats of plots, being in possession of plot Nos. 270 and 271 as their rightful owners (hereinafter referred to as the preemptors), and filed an application giving rise to Land Ceiling case No. 63/83-84 in the court of DCLR, Vaishali at Hajipur. The DCLR by his order dated 06.08.1984 dismissed the claim of the preemption. The preemptors filed an appeal before the learned Additional Collector, Vaishali giving rise to Land Ceiling Appeal No. 86/84-85/ 17/88-89.

The Additional Collector dismissed the appeal, affirmed the order of DCLR vide order dated 23.05.1989. A revision petition was thereafter filed before the learned Member, Board of Revenue under section 32 of the Act. Learned Member, Board of Revenue, after examining the documents on record and documentary evidence produced by the parties, came to a finding that the preemptors were adjoining raiyats to the west of plots in question and were rightful owners over the plot Nos. 270 and 271 lying contiguous west of the lands in dispute. On appreciation of evidence and material on record, learned Member, Board of Revenue came to a conclusive finding that the preemptors being in possession of their Khatiyani lands bearing plot Nos. 270 and 271 were definitely boundary raiyats of the land in question. Upon consideration of the materials and in view of the evidence, learned Member, Board of Revenue conclusively held that the lower courts, i.e., the court of DCLR as well as Additional Collector committed error in rejecting the preemption claim of the preemptors. It further held that their claim of preemption should have been allowed.

6. It appears that the preemptors filed a petition on 10.07.1990 before the DCLR, Vaishali at Hajipur for getting the sale deed executed in their favour in terms of the order of learned Member, Board of Revenue. Notices were

issued to the purchasers who took a plea before the DCLR that a writ application being CWJC No. No. 4200 of 1990 had been filed by them against the said order of learned Member, Board of Revenue. After taking up the matter on few dates, on 25.04.1991, learned DCLR passed an order that if the purchasers failed to produce any interim order from the High Court, the matter would proceed in accordance with law. It is the grievance of the preemptors that despite the order passed by learned Member, Board of Revenue, learned DCLR acting arbitrarily by an order dated 31.07.1991 has stayed the further proceeding of Ceiling case No. 83/84 on the basis of pendency of CWJC No. No. 4200 of 1990. This is the background of facts leading to filing of CWJC No. 5925 of 1991 by the preemptors. As has been noted above, there is no representation on behalf of the petitioners in CWJC No. 4200 of 1990.From the order sheet it appears that there was no representation on behalf of the petitioners on 15.01.2015 when the matter was called. I, therefore, intend to proceed in this matter on the basis of documents and materials available on record.

7. Upon perusal of the order of learned Member, Board of Revenue, the revisional authority, in CWJC No. 4200 of 1990, it appears that he has considered the relevant documents and also the submission advanced on behalf of

the parties and has reached to a particular finding of fact.

8. Before entering into the questions raised in CWJC No. 4200 of 1990, as regards legality of order of learned Member, Board of Revenue, limitations of judicial review under Article 226 of the Constitution of India, in the light of various pronouncements of this court and Supreme Court, has to be kept in mind. On perusal of the order passed by the revisional authority, it would transpire that he has considered the evidence available on record. The findings arrived at by him cannot be said to be without evidence since he has referred to the evidence on record before reaching to his conclusion. Insufficiency of evidence, in such circumstance, cannot be a ground for interference in writ jurisdiction. It has been repeatedly held by this court that Member, Board of Revenue is a final court of fact in a proceeding under the Ceiling Act and a writ court would be loath to disturb the well considered findings of such Tribunal authorized to determine by law, the questions of fact. The Board of Revenue is vested with full appellate jurisdiction while exercising revision under section 32 of the Act. In the case of ***State of Maharashtra v. Harishchandra & Ors reported in (1986) 3 SCC 349***, the Supreme Court has held that a writ court would normally not interfere with the findings of fact arrived at by the Board of Revenue in

exercise of power under section 32 of the Act. Questioning the validity of the order of learned Member, Board of Revenue the petitioners, as purchasers, have taken a plea that the revision petition itself was not maintainable because of non compliance of mandatory provisions under Rule 19 (3) (4) of Bihar Land Ceiling Rules, 1963 on the ground that other vendor was not impleaded as party at appellate stage and, therefore, in absence of the said vendor, Dharkhan Singh, the revision petition could not be maintained. This aspect has been dealt with by learned Member, Board of Revenue in paragraph 8 of the order impugned wherein learned Member, Board of Revenue took into account the fact that the said vendor was impleaded as party at trial stage as well as the revisional stage. Learned Member, Board of Revenue also took into account the fact that an amendment petition was filed by the preemptors for impleading the vendor at appellate stage also but it was rejected by learned Additional Collector. In the facts and circumstances of the case, learned Member, Board of Revenue rightly came to a conclusion that revision petition could not be rejected on such ground.

9. In such view of the matter, I do not find any merit in the application being CWJC No. 4200 of 1990. There is no infirmity in the order of learned Member, Board of

Revenue dated 26.05.1990 passed in revision case No. 286/89, warranting interference by this court, in exercise of power under Article 226 of the Constitution of India. This application is, accordingly, rejected.

10. Having rejected the prayer made in CWJC No. 4200 of 1990, this court is left with no option but to reject CWJC No. 5925 of 1991 whereby, the preemptors have sought a direction to the learned DCLR, Vaishali at Hajipur to proceed in accordance with law with the order of learned Member, Board of Revenue. CWJC No. 5925 of 1991 is, accordingly, allowed. Learned DCLR, Vaishali at Hajipur is directed to proceed accordingly, in view of dismissal of CWJC No. 4200 of 1990.

(Chakradhari Sharan Singh, J)

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