IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4653 of 1990

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Nago Yadav S/o Baldeo Yadav, resident of village- Thatha PS Choutham district Khagaria

.... Petitioner

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Old Secretariat, Patna
3. The Collector, Khagaria
4. The L.R.D.C. Khagaria
5. Jitendra Yadav S/o Chotelal Yadav
6. Chotelal Yadav S/o Adhik Lal Yadav
7. Umesh Yadav S/o Baralal Yadav, all 5 to 7 are residents of Thatha Panchayat Secretary Choutham District Khagaria.

.... Respondents

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Appearance :
For the Petitioner :
For the Respondents: Mr. Sushant Praveer, AC to SC 27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 02-03-2015

The petitioner in the present application under Article 226 of the Constitution of India has challenged an order passed by the Additional Member, Board of Revenue dated 05.11.1988 in a revision petition filed under section 32 of the Bihar Land Ceiling Act, 1961 (hereinafter referred to as the Act) preferred by private respondent Nos. 5 and 6 whereby, he has set aside the order of the Collector, Khagaria dated 26.05.1985 in Ceiling Appeal case No.9/85.

In a proceeding under section 16(3) of the Act respondent No.5 claimed pre-emption rights against the petitioner with respect to sale of plot No. 2990 admeasuring 2 katha by one Umesh Yadav (respondent No.7) in favour of this petitioner. He claimed that he was the adjoining *raiyat* and was first cousin of the vendor and, thus, a co-sharer. The petitioner, thus, is purchaser of the land in dispute and respondent Nos. 5 and 6, the pre-emptors. The Deputy Collector, Land Reforms, Khagaria (in short the DCLR), before whom pre-emption application No. 46/83-84 was filed, came to a finding that respondent No.5 was the adjacent raiyat and co-sharer of land in question and, thus, while allowing pre-emption application, he directed the petitioner to transfer land in question through registered deed in favour of respondent No.5. Aggrieved by the order of the DCLR passed under section 16(3) of the Act, the petitioner preferred appeal before the Collector, Khagaria giving rise to Land Ceiling Case No. 9/85-86 (appeal). Learned Collector, Khagaria reversed the order of the DCLR holding that respondent No.5 was not the adjoining *raiyat* and, therefore, had no right of pre-emption. Respondent No.5 thereafter filed revision application under section 32 of the Act against the order dated 26.05.1985 passed by the Collector, Khagaria in case No. 9/85-86, which was numbered as Khagaria No. 158/1985. The Additional Member, Board of Revenue by the impugned order held that the DCLR himself conducted enquiry and his report was vital on adjoiningship of the parties to the land in question. According to him the Collector, Khagaria failed to appreciate the relevance of the report of the DCLR. He, accordingly, upon appreciating the entire facts and circumstances of the case and materials on record, came to a finding that respondent No.5 was the adjoining *raiyat* and, therefore, he had right of pre-emption under section 16(3) of the Act. He, accordingly, set aside the order of the Appellate Authority, by the impugned order dated 05.11.1988 and restored the order of the DCLR.

From the impugned order of the Additional Member, Board of Revenue, it appears that it was passed ex- parte. It has been stated in the writ application that the petitioner relied upon respondent No.7, the vendor, from whom he used to enquire about the case pending before the revisional authority, who kept on saying that the matter was still pending for final hearing and only in June, 1990 he learnt that the revision case had been decided in favour of respondent Nos. 5 and 6.

In the writ application, I find no pleading as to how the order of the Additional Member, Board of Revenue is contrary to law. This is well settled position that Board of Revenue is the final court of facts in revenue matters and unless it is shown that the findings are perverse, this court should be slow in interfering with such finding. Reliance may be placed in this regard to decisions of this court reported in ***1986 Bihar Revenue and Labour Journal P. 1 (Kamleshwar Prasad Yadav vs. State of Bihar & Ors)*** as well as ***Bihar Law Judgements P. 500 (Jagarnath Sah vs. Pannalal Mahto & Ors)***. Dealing with the scope of section 32 of the Act this court has held that the Board of Revenue, under section 32 of the Act, is not a court merely to correct errors of law or jurisdiction, or failure to exercise jurisdiction or material irregularity, but is instead a forum of unlimited appeal. Relying upon the division Bench decisions of this court, as noted above, there remains no doubt that section 32 of the Act does not imply those well known limitations under revisional jurisdiction, which are with regard to legality or propriety of the orders of the court, in the cases under section 397 of the Cr. P.C. This court in those cases has laid down that limitations on the power of revisional courts under the C.P.C. and Cr. P.C. stand fundamentally on a different footing, which are narrow and restricted as opposed to the revisional power under section 32 of the Act, which is a forum of unlimited appeal.

The findings of facts as recorded by the Additional Member, Board of Revenue, in the impugned order, cannot be said to be perverse, based on no evidence or so absurd or arbitrary that no prudent person with the same material on record can reach to the said conclusion. Having found thus, I am of the view that in such matters scope of judicial review under Article 226 of the Constitution of India over the findings of facts is limited. The findings as recorded by the Additional Member, Board of Revenue do not warrant any interference.

I do not find any merit in this writ application and it is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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