

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11817 of 1992

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Smt. Radha Devi, Wife of Upendra Pd. Mehta, resident of Village-Garhia, Diara,
P.S.-Garhia Balua, P.S.-K. Nager, District-Purnea.

..... **Petitioner/s**

Versus

1. The State of Bihar.
 2. The Additional Member, Board of Revenue, Bihar, Patna.
 3. The Additional Collector, Purnea, At + Post + District-Purnea.
 4. The Land Reforms Deputy Collector, Sadar, Purnea, At + Post + District-Purnea.
 5. Arjun Prasad Mehta, Son of Late Singheshwar Pd. Mehta.
 6. Ganga Prasad Mehta, Son of Late Singheshwar Pd. Mehta.
- Respondent Nos. 5 and 6, both resident of Village-Garhia, Diara, P.S.-Garhia-Balua, P.S.-K. Nagar, District-Purnea.
7. Smt. Kalawati Devi, Wife of Sri Panchlhal Mahto, resident of Village-Garhia, Diara, P.O.-Garhia-Balua, P.S.-K. Nagar, District-Purnea.

..... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Parmeshwar Mehta, Advocate

For the Respondent/s : Mr. Shobha Nath Jha, Advocate

For the State : Mr. AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-04-2015

Heard the parties.

This is an application seeking quashing of the order
dated 27.08.1988 passed in Case No. 20 of 1987-88 by the



Additional Collector, Land Reforms, Sadar, Purnea, whereby, he has allowed an application for pre-emption under Section 16 (3) of the Bihar Land Ceiling Act, 1961 (**hereinafter referred to as the 'Act'**) holding respondent no. 5 to be adjoining Raiyat of the lands transferred to the petitioner by respondent no. 6. The petitioner had preferred an appeal and, thereafter, revision before the Additional Collector, Purnea and the Additional Member, Board of Revenue, Bihar, Patna, respectively, however, she lost there also. The orders passed by the Additional Collector and the Additional Member, Board of Revenue are also under challenge.

Apparently, respondent no. 5 is the pre-emptor, whereas, respondent no. 6 is the vendor of the lands appertaining to Plot No. 1381 and Plot No. 1352 measuring 1.25/3/½ acres at Village-Garhia, under the Police Station-K. Nagar.

Learned counsel for the petitioner, while assailing the impugned orders, has submitted that the petitioner is a *bona fide* purchaser of the lands in question and her husband himself is the adjoining Raiyat of the lands in question. He has submitted that as a matter of fact, the land was purchased by the husband of the petitioner, in her name and, therefore, the



courts below wrongly entertained the application under Section 16 (3) of the Act on the ground that respondent no. 5 was adjacent Raiyat and had, therefore, preferential right to purchase the said property. Learned counsel for the petitioner has also submitted that the husband of the petitioner comes within the meaning of “family” as defined under Section 2 (ee) of the Act and, therefore, he being the real purchaser and adjacent Raiyat of the lands in question, the pre-emption application should not have been allowed.

Learned counsel appearing on behalf of the private respondent no. 5, on the other hand, has submitted that there is concurrent finding of fact consistently by three revenue courts holding that respondent no. 5 was the adjacent Raiyat and rightly allowed the pre-emption application under the facts and circumstances of the case. He has submitted that had it been the case of the petitioner that her husband had purchased the said property and he was adjoining Raiyat of the lands in question and that purchase of the said property in the name of the petitioner was Benami transaction, her husband could have preferred appeal or could have been impleaded as party before the revenue courts below at the stage of appeal or revision. This having not been done, the claim of the petitioner that the

lands, in question, were purchased by the husband of the petitioner, who was the adjoining Raiyat, cannot be entertained.

Evidently, there is concurrent finding of fact by all the three revenue courts below that respondent no. 5 was the adjacent Raiyat and had therefore, he had preferential right of pre-emption under Section 16 (3) of the Act.

The contention made on behalf of the petitioner that the husband of the petitioner comes within the meaning of “family” as defined under Section 2 (ee) of the Act and he being the adjoining Raiyat, the pre-emption application should not have been allowed, cannot be accepted for the simple reason that Section 16 (3) of the Act does not refer to the term “family” and instead the word “person” has been used. Section 16 (3) (i) of the Act reads thus:-

“16 (3) (i) When any transfer of land is made after the commencement of the 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 the 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 percent thereof is deposited in the prescribed manner within the said period.”

On plain reading of sub-Section 3 (i) of Section 16 of the Act, it will appear that it does not refer to the family of a person other than co-sharer or a Raiyat of adjoining land rather it refers to the person to whom the transfer of lands is made, not being co-sharer or a Raiyat of adjoining land. The submissions made on behalf of the petitioner cannot be accepted. The impugned decisions of the revenue courts below need not be interfered. I do not find any merit in this application.

This application is, accordingly, rejected.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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