IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4202 of 1993

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1. Baleshwar Sah S/o Late Bunni Sah
2. Amir Lal Sah S/o Ramuni Sah

3(A). Ram Nath Sah S/o Late Sahdeo Sah, all resident of village- Nainaha PO Panapur Langa PS Hajipur Sadar district Vaishali

.... Petitioners

Versus

1. Addl. Member Board of Revenue, Bihar, Patna
2. Collector, Hajipur, district Vaishali
3. Deputy Collector, Land Reforms, Hajipur district Vaishali
4. Sakaldeep Sah resident of village- Nainaha PO Panapur Langa PS Hajipur district Vaishali
5. Smt. Bateshwari Devi W/o Siyaram Thakur, daughter of Late Jang Bahadur Thakur, resident of village- Anjan PO & PS Sarai district Vaishali
6. Smt. Chandrawati Devi W/o Ram Dinesh Pandey and daughter of Late Jang Bahadur Thakur, resident of village- Adampur PS Goraul district Vaishali.

.... Respondents

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Appearance:

For the Petitioners : M/s. Sunil Kumar & Sushant Kumar, Advocate

For the Respondents:

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 07-05-2015

This is an application seeking quashing of the order dated 15.03.1993 passed in Case No. 115 of 1992 by the Additional Member, Board of Revenue whereby, he has set aside the order passed by Collector, Vaishali dated 04.07.1991 in Ceiling Appeal No. 103/1990 whereby, the Collector had confirmed the order dated 13.08.1990 passed by the Deputy Collector, Land Reforms, Vaishali, Hajipur (hereinafter referred to as the DCLR) in Ceiling case No. 6/90-91 and 7/90-91. The DCLR by his two separate orders dated 13.08.1990 passed in Ceiling case No. 6/90-91 and 7/90-91 had allowed the claim of pre-emption filed by the petitioners. The Additional Member, Board of

Revenue, however, for the reasons assigned in the order under challenge, held that the petitioners did not have any legitimate claim of pre-emption in the facts and circumstances of the case and, accordingly, allowed the revision application filed by respondent No.4.

A counter affidavit has been filed on behalf of respondent No.4. However, there is no representation on his behalf in course of hearing of the present writ application.

In the dispute arising out of a proceeding under section 16(3) of the Ceiling Act the petitioners are pre-emptors. From the pleadings in the writ application, it appears that one Kamal Sah had two sons, Bunni Sah and Ramuni Sah. Petitioner No.1 of the present application is son of said Bunni Sah whereas petitioners Nos. 2 and 3 are son and grand son of said Ramuni Sah. It is their claim that admittedly, at the time when the dispute arose, they were joint.

The dispute relates to RSP No. 944, Khata No. 232 of village Nainha admeasuring an area of 12 decimals. The total area of the said plot is said to be 24 decimals. Jangi Thakur and Rampati Thakur were landholders of plot No. 944 out of which Jangi Thakur had got half share which was subsequently inherited equally by his two daughters Bateshwari Devi (respondent No.5) and Chandrawati Devi (respondent No.6).

It is the case of the petitioners that respondents Nos. 5 and 6 sold their share of land through two separate sale deeds executed on

21.07.1988 in favour of respondent No.4. It is also their case that respondents Nos. 5 and 6 had share of 6 decimals, each which was transferred by separate sale deeds executed by them in favour of the respondent No.4.

Claiming right of pre-emption under section 16(3) of the Act, petitioners filed two separate applications before the DCLR with respect to two sale deeds which were executed by two different persons in favour of the respondent No.4 giving rise to Ceiling case No. 6/90-91 and 7/90-91. The DCLR by two separate orders passed on 13.08.1990 in the said Ceiling case No. 6/90-91 and 7/90-91 allowed the claim of pre-emption. Respondent No.4 filed one appeal challenging both orders before the Collector, Vaishali which was treated as Ceiling Appeal No. 103/1990. The Collector, Vaishali dismissed the appeal on merits. Respondent No.4 thereafter preferred revision before the Additional Member, Board of Revenue which was registered as Case No. 115/ 1992. The Additional Member, Board of Revenue allowed the revision application holding that the petitioners did not have any right of pre-emption and the courts below committed grave error of law on facts.

Learned counsel for the petitioners has submitted that there were two separate sale deeds executed by two different persons. Two separate pre-emption applications were filed accordingly by the petitioners and, accordingly, the DCLR passed two separate orders on the applications claiming pre-emption. He submits that it was not permissible for the respondent No.4 to have filed one composite appeal challenging both orders dated 13.08.1990 passed by the DCLR in two separate pre-emption proceedings. He has submitted that if respondent No.4 intended to challenge the two separate orders passed by DCLR, two separate appeals and two separate revision petitions should have been filed before the competent revenue authorities. He has, accordingly, submitted that the Additional Member, Board of Revenue wrongly entertained the revision petition and Appellate Authority, i.e., Collector, Vaishali wrongly entertained one appeal against two separate orders passed in two separate proceedings.

I find substance in the submission made on behalf of the petitioners to this extent. This is not in dispute that the said sale deeds were executed by two separate persons. In such circumstance, it was not permissible for the Appellate Authority or the Revisional Authority to have entertained one appeal and one revision against two orders.

Learned counsel for the petitioners has also assailed the order passed by Additional Member, Board of Revenue on the ground that Additional Member, Board of Revenue wrongly came to a conclusion that the petitioners were not boundary raiyats. He has also submitted that the Additional Member, Board of Revenue wrongly held the transaction through two sale deeds in favour of respondent No.4 to be invalid on the ground that it was hit by section 5 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

He has submitted that it was not within the jurisdiction of Additional Member, Board of Revenue to give his finding on the legality or otherwise of the sale deeds by invoking provisions of the Consolidation Act.

Since I am of the view that against two separate orders passed by the DCLR, two separate appeals could have been preferred and two separate orders could not have been challenged by filing one appeal, the orders of the Appellate Authority, i.e., the Collector, Vaishali as well as Revisional Authority, i.e., Additional Member, Board of Revenue cannot be sustained. Both the orders are set aside.

It will be open for the respondent No.4 to prefer two separate appeal against two separate orders dated 13.08.1990 passed by the DCLR in Ceiling case No. 6/90-91 and 7/90-91. If he does so within a period of 30 days from today, the Appellate Authority shall not reject such appeal on the ground of limitation as the matter is pending before this court.

This writ application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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