# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.508 of 2010**
**IN**
**Civil Writ Jurisdiction Case No. 13916 of 2003**

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1. Umesh Singh S/O Late Sita Ram Singh R/O Vill.- Nisarpura Sarwar, P.S.- Arwal, Distt.- Arwal (Jehanabad)
2. Naresh Singh S/O Late Sita Ram Singh R/O Vill.- Nisarpura Sarwar, P.S.- Arwal, Distt.- Arwal (Jehanabad)
3. Sanjay Singh S/O Late Sita Ram Singh R/O Vill.- Nisarpura Sarwar, P.S.- Arwal, Distt.- Arwal (Jehanabad)

.... .... Appellant/s

Versus

1. The State Of Bihar, Through The Member Of Revenue, Govt. Of Bihar, Patna
2. The District Magistrate-Cum-Collector, Jehanabad, Distt.- Jehanabad
3. The S.D.O., Arwal, Distt.- Arwal (Jehanabad)
4. Muneshwal Kuer Widow Of Late Ram Naresh Ojha R/O Vill.- Baidrabad Tola Ojha Bigha, P.S.- Arwal, Distt.- Arwal (Jehanabad)
5. Upendra Narayan Ojha S/O Late Mukh Narain Ojha R/O Vill.- Baidrabad Tola-Ojha Bigha, P.S. And Anchal- Arwal, Distt.- Arwal (Jehanabad)

.... .... Respondent/s

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**Appearance :**

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| For the Appellant/s : | Mr. Ram Suresh Roy, Senior Advocate |
| | Mr. ajay Kumar Singh, Advocate |
| For the Respondent/s : | Mr. Durganand jha |
| | Mr. Shailesh Kashyap |
| For Respondent No. 4 | Mrf. Upendra Kumar Singh |

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**
**and**
**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 14-07-2015**

This intra Court Appeal is filed by the private respondents, being respondent nos. 5, 6 and 7 of the writ proceeding. They are aggrieved by the judgment and order dated 05.10.2009, passed by the learned Single Judge of this Court in CWJC No. 13916 of 2003 ( Upendra Narayan Ojha Vrs. The State of Bihar and others).

The writ Court had allowed the writ petition and set aside the order dated 23.10.2003, passed by the learned Additional Member, Board of Revenue, in Revision Case No. 148/2001 whereunder the Additional Member, Board of Revenue, Bihar had set aside the order dated 10.01.2001 and order dated 28.08.2001, passed by the Sub Divisional Officer, Arwal and the order of the appellate authority i.e. Collector of the District- Jehanabad, dated 09.7.2001, affirming the order dated 10.01.2001 of the Sub Divisional Officer. The effect of the orders of the learned Additional Member, Board of Revenue was that the claim of pre-emption made by the writ petitioner was rejected. It is under those circumstances that the writ petition was filed for setting aside the order of the Additional Member, Board of Revenue, restoring the order of the Sub Divisional Officer, allowing pre-emption.

It may be noticed that by order dated 10.01.2001, the respondent Sub Divisional Officer had passed orders in terms of Section 16 (3) (i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land) Act, 1961, whereby during pendency of the application seeking presumption, he had directed for delivery of possession, execution of document of transfer of land to the pre-emptor by order dated 28.08.2001 was an order subsequently passed. The basic facts are not in dispute.

The appellants purchased certain land by virtue of two sale deeds, which were executed by respondent No. 4 Muneshwar Kuer to the writ petition. No sooner documents were registered, the writ petitioner, who is respondent No. 5 in this Appeal, filed an application before the Sub Divisional Officer, Arwal claiming pre-emption in respect of land aforesaid.

By order dated 10.01.2001 in terms of Section 16 (3) (i) of the Act at the interim stage itself, the Sub Divisional Officer directed delivery of possession of the lands to the preemptor.

The appellants, being aggrieved by this order dated 10.01.2001, which was an order passed at interim stage, filed an appeal before Collector of the District as statutorily provided. The Collector of the District, vide order dated 09.7.2001, dismissed the Appeal, affirming the interim order of the Sub Divisional Officer and it is against this order that Revision No. 148 of 2001 was filed by the Appellants before the Additional Member of Revenue, assailing the order dated 10.01.2001 of the Sub Divisional Officer and the appellate order dated 09.7.2001, passed by the Collector of the District.

It appears that the Member, Board of Revenue heard the matter and dismissed the revision application by order dated 17.08.2002 but on an application filed by the appellants, it was restored. At this stage, the appellants now having come to know that final order has been passed by the Sub Divisional Officer on 28.08.2001 instead of filing any appeal against the order, straight way moved in revision by filing an application in the said Revision application, challenging the original order of the Sub Divisional Officer. This order dated 28.08.2001 was final order of the Sub Divisional Officer allowing the preemption application, against which statutory appeal is provided to the Collector of the District. The appellants did not move the Collector of the District at all against this final order of the Sub Divisional Officer.

The Additional Member, Board of Revenue now after hearing the parties, set aside both the orders i.e. the interim order passed by the Sub Divisional Officer, Arwal in terms of Section 16 (3) (i) as well as the final order passed in terms of Section 16 (3) (ii) of the Act and remanded the matter for re-consideration on the ground whether the full consideration amount as required had been deposited or not and then it would decide the question accordingly.

The learned Single Judge held that the Additional Member, Board of Revenue, was wrong in entertaining in the revision challenge to the final order dated 28.08.2001, passed by Sub Divisional Officer because he was exercising revisional jurisdiction and that is exercised against the appellate order. The appellants before this Court having not preferred the appeal against order dated

28.08.2001, could not have directly challenged the final order of the Sub Divisional Officer before the Board of Revenue. On this count alone, the order of the Additional Member, Board of Revenue was rightly set aside. The Member, Board of Revenue erred in entertaining the challenge to the final order of the Sub Divisional order directly without there being any appeal, filed against the same. We see no reason to interfere with the order of learned Single Judge in this regard.

Learned senior counsel appearing on behalf of the appellants who were respondents in the writ proceedings in support of their claim submits that this interim order of the Sub Divisional Officer dated 10.01.2001 as well as the final order dated 28.08.2001 were wrong orders and if the order of the Additional Member, Board of Revenue was also a wrong order then the learned Single Judge ought to have not interfered with either of the order or if interfered with, then the learned Single Judge ought to have set aside both sets of orders because doing otherwise would revive an illegal order.

The learned Single Judge did not accede to this prayer and rightly so in our view.

As per the sale deed in the column dealing with consideration, it is written that the consideration is Rs. 45,500/-,to which subsequently Rs. 5000/- was added, the total being Rs. 50,500/-

Mr. Ram Suresh Roy, learned Sr. Counsel for the appellants draws attention of this Court towards order of the Sub Divisional Officer in regard to the deposit of consideration money of Rs. 45,500/- only, apart from 10 % of the statutory amount having been provided in the Act. He thus shows that the preemptor did not deposit the entire consideration money which is the condition precedent.

We have examined the sale deeds, copies whereof have been annexed to this appeal. In the column meant for consideration, it is written that the consideration amount is Rs.45, 500/-, to that there is addition of Rs. 5000/- and then a total of Rs. 50,500/-, but when we go through the sale deed, there is a clear statement that the consideration amount is only Rs. 45,500/- out of which Rs. 43,000/- has been paid and the rest Rs. 2500/- will be taken at the time the chircut i.e. registration receipt, was exchanged. This clearly shows that the consideration amount was, in fact, only Rs. 45,500/-. The question is why Rs. 5000/- was added in the consideration column. The answer is in the sale deed itself. In the sale deed itself, it is noticed that the explanation is given which shows that the consideration amount was, in fact only Rs. 45,500/- but as the government value is RS. 50,500/-, hence Rs. 5000/- was added for the purposes of due payment of stamp duty. Thus though the consideration amount is Rs. 45,500/- but for the purposes of registration, it is valued at Rs. 50,500/- Therefore, in our view, it is clear that the consideration amount being Rs. 45,500/- as mentioned in the sale deed, no wrong was committed by passing order directing the deposit of only the consideration amount of Rs. 45,500/- along with the statutory amount. In the aforesaid facts on that ground the Additional Member, Board of Revenue was wrong in setting aside the order. Thus, we see no reason to interfere with the order of the learned Single Judge.

This appeal is accordingly, disposed off

**(Navaniti Prasad Singh, J)**

**(Nilu Agrawal, J)**

Sudha/-

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