

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18459 of 2009

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1. Naresh Paswan S/O Brahmdeo Paswan, R/O Vill- Rahua, P.S- Krityanand Nagar, Distt- Purnia
 2. Suresh Paswan S/O Brahmdeo Paswan, R/O Vill- Rahua, P.S- Krityanand Nagar, Distt- Purnia

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Collector of the District Of Purnia
4. The Sub-Divisional Officer at Sadar, Purnia
5. Shri Rajendra Goswami S/O Late Manik Lal Gir @ Manik Lal Goswami, R/O Vill- Chapia, P.S.- Kajanchi Hat, Distt- Purnia
6. Shri Nand Lal Goswami S/O Late Manik Lal Gir @ Manik Lal Goswami, R/O Vill-Chapai, P.S- Khajanchi Hat, Distt- Purnia

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha

For the Respondent No.1 to 4: Mrs. Kumari Amrita, GP-10

Mr. Mithilesh Kumar Upadhyay, AC to GP-10

For the Respondent No.5 : Mr. Madhav Roy

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 25-08-2015

Heard the parties.

2. The present matter arises out of a proceeding under Section 16(3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short “Land Ceiling Act”).

3. The petitioners purchased plots of land bearing khata no. 284 plot no. 1901 area 30 decimals and khata no. 283 plot no. 1903 area 12 decimals, total area being 42 decimals, situate at village Rahua, P.S. Krityanand Nagar, District Purnia (hereinafter referred to as “the land in question”) through a registered deed of sale dated 15.05.2002 (Annexure-1). The respondent no.5, claiming to be co-sharer of the vendor as also the boundary raiyat of the vended plots,



raised his claim of pre-emption under Section 16(3) of the Land Ceiling Act, which gave rise to Pre-emption Case No. 8 of 2002-2003 in which the petitioners were impleaded as opposite parties. The aforesaid pre-emption case was finally allowed by impugned order dated 19.11.2002 (Annexure-3) passed by the S.D.O.-cum- Incharge D.C.L.R., Sadar, Purnia, after recording a finding of fact that the notices were served upon the purchasers, but since they had chosen not to appear, therefore, the matter was decided ex parte. The petitioners, being aggrieved by the aforesaid order, filed Ceiling Appeal No. 4 of 2003 before the respondent District Collector, Purnia, which, at the stage of admission itself, was dismissed by a cryptic and non-speaking impugned order dated 19.10.2004 (Annexure-4). The petitioners, being further aggrieved by the aforesaid two orders, preferred revision application under Section 32 of the Land Ceiling Act, which gave rise to Case No. 15 of 2005, which was finally dismissed by the respondent Additional Member, Board of Revenue, Bihar, Patna by the impugned order dated 05.06.2008 (Annexure-5).

4. Learned counsel appearing on behalf of the petitioners, while assailing the validity and correctness of the impugned orders passed by the statutory authorities, has raised primarily two issues: firstly, that original authority passed the impugned order ex parte, without valid service of notice upon the petitioners and the said order was mechanically affirmed by the respondent District Collector by a cryptic and non-speaking order. Furthermore, the points raised on behalf of the petitioners were not taken into consideration by the respondent Additional Member, Board of Revenue, Bihar, Patna while passing the impugned revisional order dated 05.06.2008 (Annexure-5); and secondly, that the petitioners are landless persons,



therefore, the pre-emption application filed on behalf of the respondent no.5 was not maintainable. Hence, the orders impugned are not sustainable in law. In support of his above contention, he has placed reliance upon various judgments of this Court including that of Division Bench Judgements in the cases of **Nathuni Singh Yadav v. State of Bihar** [1997(2) PLJR 287] and **Leela Devi vs. State of Bihar** [2014(2) PLJR 177] as also a Single Bench Judgement in the case of **Bharat Prasad v. State of Bihar** [2005(2) PLJR 24].

5. The matter has been contested by the learned AC to GP-10 appearing on behalf of the respondent no. 1 to 4 and the learned counsel appearing on behalf of the respondent no.5. However, despite valid service of notice, the respondent no.6 has chosen not to appear and not to contest the matter.

6. Learned counsel appearing on behalf of the respondent no.5 submitted that the petitioners are not landless persons; therefore, plea taken on their behalf that pre-emption application was/is not maintainable, is fit to be rejected. In support of his above contention, he has placed reliance on certain documents annexed with the counter-affidavit filed on behalf of the respondent no.5 and those documents are said to be either in the name of father or grand father of the petitioners. It is further submitted that before the original authority, despite valid service of notice, the petitioners did not contest the matter; therefore, the matter was decided ex parte and the said order was affirmed by the appellate authority as also by the revisional authority. Hence, according to him, the writ petition is liable to be dismissed.

7. Learned State counsel has supported the impugned orders, but has fairly conceded that a Division Bench of this Court in the case of **Ramanuj Pandit vs. State of Bihar** [2011(4) PLJR 734]

has laid down the principle that if the purchasers are the landless persons, the pre-emption application shall not lie.

8. In view of series of judgments of this Court, it is now well settled that pre-emption application under section 16(3) of the Land Ceiling Act shall not lie with respect to a transfer of land, if the purchaser is a landless person or having less than one acre of land except the land purchased by him. A Division Bench of this Court in the case of **Nathuni Singh Yadav v. State of Bihar** (Supra) has crystallized the principles that the pre-emption application under section 16(3) of the Land Ceiling Act will lie only when all the three parties i.e. transferor, the transferee and the pre-emptor are the landholders. It has further been held that if the landless purchaser is not allowed the protection it may mean that he cannot acquire any land, as whenever purchase is made by the landless person and claim of pre-emption is made by a co-sharer or an adjacent raiyat of the land transferred, then in that case such landless person shall not be in a position to resist the claim of pre-emption. The Division Bench has finally concluded that such situation would put the landless person in an unjust and inequitable position.

9. In the case of **Bharat Prasad v. State of Bihar** (Supra), while following the principles laid down by the Division Bench in the case of **Nathuni Singh Yadav vs. State of Bihar** (supra), a learned Single Judge of this Court has gone to the extent that if the purchaser is having less than one acre of land, then he/she shall be treated to be a landless person under the scheme of Section 27 (1)(IV) of the Land Ceiling Act, and in that situation, pre-emption application under Section 16(3) of the Land Ceiling Act shall not be maintainable.

10. The aforesaid principles have not only been reiterated, at least, by two Division Bench judgements of this Court in the cases of



Ramanuj Pandit vs. State of Bihar (Supra) and **Leela Devi v. State of Bihar** (Supra), but in later case, it has further been enlarged that section 16(3) is required to be read with Section 27 of the Land Ceiling Act, and if the purchaser is a landless person or belongs to a class of persons who come within the purview of Sub-Section (1)(i) to (1) (v) & (1a) of Section 27 of the Land Ceiling Act, then he is required to be given protection from such preferential right of pre-emption, and the word “landless” does not need any precise definition.

11. Now, coming to the present case, this Court finds that evidently the order of original authority was an ex parte order, although it has been recorded that the notices were validly served upon the petitioners. The petitioners have asserted in paragraph-15 of the writ petition that, in fact, notices were never served upon them. Therefore, they had no occasion to contest the claim of pre-emption raised on behalf of the respondent no.5. Despite opportunity granted, the respondent no. 1 to 4 have not filed their counter-affidavit disputing the aforesaid claim of the petitioners. However, the respondent no.5 has filed a counter-affidavit and has simply denied the assertions made on behalf of the petitioners, but has not positively asserted that, in fact, notices were either actually served upon the petitioners, or they had knowledge and information about the pendency of the pre-emption case.

12. This Court further finds that the respondent District Collector dismissed the appeal of the petitioners at the very threshold by a most cryptic and non-speaking order. The respondent Additional Member, Board of Revenue, though has noticed that the petitioners claim to be landless persons and have purchased the land in question for their homestead purposes, but this issue was not conclusively

decided while passing the impugned revisional order. So far the documents produced by the respondent no.5 are concerned, those documents were required to be examined by the statutory authorities, but it appears that none of the statutory authorities had occasion to look into those documents produced by the respondent no.5.

13. This Court is of the considered opinion that the issues of facts must be raised by the parties, at the first instance, before the statutory authorities and such issues of facts must be conclusively decided by such authorities, and only thereafter such issue can be considered by the High Court while exercising the powers of judicial review under Article 226 of the Constitution of India.

14. After having heard the parties and on consideration of the entire materials available on record, as also taking into consideration the judicial pronouncements made by this Court, as referred to above, this Court is of the considered opinion that the matters require re-consideration and fresh decision from the stage of original authority. The issues of facts raised on behalf of the petitioners vis-à-vis respondent no.5 including the issue of the petitioners being the landless persons must be gone into and conclusively decided by the statutory authorities before coming to a particular conclusion. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them.

15. For the reasons recorded above, the impugned order dated 19.11.2002 (Annexure-3) passed by the S.D.O.-cum- Incharge D.C.L.R., Sadar, Purnia, the impugned appellate order dated 19.10.2004 (Annexure-4) passed in Ceiling Appeal No. 4 of 2003 by the respondent District Collector, Purnia, and the impugned revisional order dated 05.06.2008 (Annexure-5) passed by the respondent Additional Member, Board of Revenue, Bihar, Patna as also all the

consequential action taken by the statutory authorities pursuant to the aforesaid orders are hereby set aside and quashed, and the entire matter is remitted back to the respondent D.C.L.R., Sadar, Purnia with a direction to decide the matter afresh in accordance with law after giving reasonable opportunity of hearing to all the parties.

16. In the result, the writ petition stands allowed to the extent indicated above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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