

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4181 of 1992

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1. Ram Kishore Rai S/O Most. Sharda Devi R/O Village- Samho, P.S. Nayagaon, District- Begusarai
 2. Sita Devi W/O Late Ram Balak Rai (Daughter In Law Of Most. Sharda Devi) R/O Village- Samho, P.S. Nayagaon, District- Begusarai
 3. Rabindra Rai S/O Late Ram Balak Rai (Grand Son Of Most. Sharda Devi) R/O Village- Samho, P.S. Nayagaon, District- Begusarai
 4. Birendra Kr. Rai S/O Late Ram Balak Rai (Grand Son Of Most. Sharda Devi) R/O Village- Samho, P.S. Nayagaon, District- Begusarai
 5. Ram Pukari Devi W/O Bhola Singh (D/O Most. Sharda Devi) R/O Village- Samho, P.S. Nayagaon, District- Begusarai
 6. Ram Kumari Devi W/O Ram Charit Singh (D/O Most. Sharda Devi) R/O Village- Samho, P.S. Nayagaon, District- Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Member, Board of Revenue, Bihar, Patna
3. The Collector, Begusarai
4. The Deputy Collector, Land Reforms, Begusarai
5. Bhola Chaudhary S/O Late Ram Pukar Chaudhary R/O Village- Samho, P.S. Nayagaon, District- Begusarai
6. Smt. Manju Kumari D/O Late Ram Pukar Chaudhary R/O Village- Samho, P.S. Nayagaon, District- Begusarai
7. Smt. Krishna Kumari D/O Late Ram Pukar Chaudhary and W/O Upendra Singh R/O Village- Ramchandrapur, P.S. Ramchandrapur, District- Munger
8. Sukdeo Narain Singh S/O Late Madhu Mangal Singh R/O Village- Samho, P.S. Nayagaon, District- Begusarai

.... Respondents

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Appearance :

For the Petitioner : Mr. Siya Ram Shahi, Advocate
For the Respondents : Mr. (SC1)
Mr. Rajendra Kumar
Mr. Rajeev Ranjan Pd.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 10-03-2015

The original petitioner had purchased 10 katha of land in khesra No. 771 under khata No. 161 in village Saidpur of the district of Munger from one Sukdeo Narayan Singh through the



registered sale deed dated 08.02.1979 on 17.04.1979. Ram Pukar Choudhary, father of private respondent Nos. 5 to 7, filed a pre-emption application under section 16(3) of Bihar Land Ceiling Act, 1961 (hereinafter referred to as the Act) before the Deputy Collector, Land Reforms, Begusarai (in short the DCLR) claiming himself to be adjoining raiyat of the vended land. In support of his claim that he was the adjoining raiyat, he relied upon a sale deed in which his name was shown as south western boundary raiyat of the vended land. The purchaser resisted the claim of pre-emption before the DCLR on the ground that the purchased land was homestead and that she herself was the southern boundary raiyat of the disputed land and, therefore, the claim of pre-emption was not tenable.

2. The DCLR allowed the pre-emption application after holding that:-

(i) The pre-emptor was western boundary raiyat, which fact was conceded by the son of purchaser.

(ii) The purchaser was not the boundary raiyat as a road intervened between the vended plot and the land held by the purchaser.

(iii) On the question whether the disputed land was homestead and, therefore, the right of pre-emption could be entertained or not, the DCLR referring to the definition of land



under section 2 (f) and relying upon the judgement of this court reported in 1970 BLJR 1010 (*Jugeshwar Singh & anr. V. Jainandan Singh & Ors*) came to a conclusion that the law of pre-emption was applicable to homestead land, in the facts and circumstances of the case. The DCLR, thus, by his order dated 27.06.1984 passed in Ceiling (Pre-emption) case No. 32/ 1979-80 (annexure-2) allowed the pre-emption application and directed the purchaser to transfer the land in question in favour of the pre-emptor.

3. Aggrieved by the order the DCLR, the original petitioner preferred an appeal before the Collector, Begusarai vide Ceiling Appeal No. 48/1984. The Collector, Begusarai by an order dated 14.12.1989 dismissed the appeal. She thereafter preferred revision case No. 40/1990 before the Member, Board of Revenue under section 32 of the Act. The learned Member, Board of Revenue, by his order dated 28.11.1991, dismissed the revision petition. It is in this background that the three orders dated 27.06.1984 passed by the DCLR, Begusarai in Ceiling (pre-emption) case No. 32/ 1979-80, the order dated 14.12.1989 passed by the Collector, Begusarai in Ceiling (Misc.) case No. 48/1984 and the judgement and order dated 28.11.1991 passed by learned Member, Board of Revenue, Bihar in Ceiling Revision case No. 40/1990 are under challenge in the present application under Article 226 of the Constitution of India.

4. The original petitioner, Sharda Devi died during the pendency of this application and has been substituted by her legal heirs, who have been duly represented through learned counsel.

5. I have heard Mr. Siyaram Shahi, learned counsel for the petitioners as well as learned SC 1 representing the respondents the State of Bihar as well as the private respondents.

6. Mr. Siyaram Shahi, learned counsel for the petitioners has submitted, with all vehemence, that the objection raised on behalf of the purchaser to the pre-emption application that the land in question was homestead land was not duly addressed by the authorities below. He has submitted that the land in question was purchased by the original petitioner for construction of house over it and she had residential house on the southern boundary of the purchased land. He has submitted that the petitioner herself was the adjoining raiyat and, therefore, the pre-emptor could not successfully claim his right of pre-emption, in the facts and circumstances of the case. He has contended that the DCLR had appointed a Pleader Commissioner to report whether the land in question was used as homestead land or not whereupon the Pleader Commissioner in his report specifically stated that there was residential house near the disputed land and there was school building on the west of it. According to the Pleader Commissioner also, there existed Naath, Khunta, buffalos, cows, oxen in the

southern side of vended plot. He has submitted, accordingly, that there was enough evidence before the authorities that the land in question was a homestead land and, therefore, no right of pre-emption was available under section 16(3) of the Act.

7. On the basis of pleadings in the writ application and the submissions made by Mr. Shahi, in my opinion, three questions have emerged:-

(i) Whether the per-emptor was the contiguous raiyat of the plot in question or not;

(ii) Whether the purchaser herself was the adjoining raiyat of the land in question or not;

(iii) Whether the land in question was homestead land and if yes, whether on that ground right of pre-emption under section 16(3) of the Act was not available to the Private Respondents.

8. So far as the questions Nos. 1 and 2, as noted above, are concerned, I do not intend to go into the correctness of the concurrent findings of facts recorded by three revenue courts, as noted hereinabove.

9. Upon perusal of the order passed by the revenue authorities, I find that they have come to the finding that the pre-emptor was boundary raiyat, on the basis of evidence, which cannot be said to be immaterial for reaching to such conclusion. The



finding cannot be said to be without any evidence and perverse on that count. The findings, in my view, therefore, cannot be interfered with in a proceeding under Article 226 of the Constitution before this court exercising power of judicial review. I am, thus, left with the sole question as to whether the petitioners can successfully take a plea that no right of pre-emption can be claimed with respect to the land, since it is a homestead land.

10. Mr. Siyaram Shahi, learned counsel appearing on behalf of the petitioners, in support of his submission has placed reliance upon the following judgements of this court:-

(i) **1967 BLJR 49 (Md. Yasin v. Abdul Rauf)**

(ii) **1969 BLJR 284 (Ganesh Prasad v. Jugeshwar Tewari & Ors.)**

(iii) **1971 BLJR 974 (Kamlakant Goswami v. Balgobind Sah)**

(iv) **2010 (1) PLJR 845 (Ram Niwas Singh & anr. V. the State of Bihar through the Commissioner-cum-Secretary, Land Reforms and Survey, Patna & Ors)**

11. Before I consider the submissions made on behalf of Mr. Shahi that the land in question being homestead land is not amenable to a proceeding under section 16(3) of the Act, I consider it appropriate to quote relevant statutory provision under the Act. Section 16(3) of the Act reads as follows:-

“16(3) 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 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”.

The expression “land” has been defined under section 2

(f) of the Act which reads thus:-

“2(f) “land” means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, kharhur or pasturage or [forest land or [also the land] perennially submerged under water] or the homestead of land-holder;

Explanation-1.-“Homestead” means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and includes any out building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.”

12. A bare reading of the definition of land occurring in section 2(f) will demonstrate that land includes “homestead of land holder”. Homestead has been defined in explanation 1 of section 2(f) of the Act as a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and includes

any out building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

13. For a homestead to be treated as “land” within the meaning of the Act, it must belong to a land holder. Land holder has been defined under section 2(g) of the Act as a family as defined in clause (ee) holding land as raiyat or as under-raiyat or a mortgagee of land in possession of holding land permanently settled by Government or lessee of land not resumable by Government. Raiyat has been defined under section 2(k) of the Act as a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners and includes also the successors in-interest. Section 2(m) defines under-raiyat as a tenant, holding land whether immediately or mediately under a raiyat.

14. Upon conjoint reading of section 2(f), 2(g), 2(k) and 2(m) of the Act, I am of the view that a homestead belonging to a family within the meaning of section 2(ee) of the Act holding the said land as raiyat or under raiyat or a mortgagee, being used for the purpose connected with agriculture or horticulture is “land” within the meaning of section 16(3) of the Bihar Land Ceiling Act, 1961 read with Section 2(f) of the Act and transfer of such homestead land will certainly be amenable to the provisions under section



16(3) of the Act. A person resisting the right of pre-emption with respect to transfer of a land on the ground that such land is homestead and, therefore, its transfer is not amenable to provisions of section 16(3) of the Act will have to establish that such homestead is not being used for the purpose connected with agriculture or horticulture. Even a dwelling house being used for the purpose of living will come within the definition of “land” if it is being used so for the purpose connected with agriculture or horticulture. The submission of Mr. Shahi that section 16(3) of the Act will have no application for the transfer in question will have to be considered in the background of the statutory provisions as noted and discussed above.

15. While allowing the pre-emption application the revenue authorities have relied upon a division Bench judgement of this court in case of ***Jugeshwar Singh & anr. v. Jainandan Prasad Singh & Ors*** reported in ***1970 BLJR 1010***. This court laid down the law in paragraph 4 of the said judgement referring to section 2 of the Act, relevant portion of which reads thus:-

“There is no provision anywhere in the Act making a distinction between homestead area, residential area and non residential area. If anything, it provides only in regard to the land of a land-holder as defined in Sec. 2. We are, therefore, unable to accept the contention that although the learned Judges, in the above case confined exemption of land only within urban area it is obvious that on the line of the reasoning they have adopted the section would apply even to land which would be held to lie within rural area if it is homestead land.



According to learned counsel, there is no reason to think that Sec. 16(3) of the Act would not be applicable to such a case. In view of clear pronouncement of the court, however, it is not necessary to deal more elaborately with the legal position in regard to Sec. 16(3), in so far as we gather from an examination of the various clauses of Sec.2 and other sections of the Act relating to the object of the Act as also the policy of Legislature in laying down a limit of area of land to be possessed by Land-holders as also with regard to how consolidation of areas will be applicable in case of land being sold and owner of the neighbouring land asserting a right of pre-emption in respect of it. The contention raised on behalf of the opposite party, therefore, must be overruled and it must be held that in any view the provisions of Sec. 16(3) do apply even to such homestead as is situated in rural area and not urban area”.

16. Before I refer to various judgements of this court relied upon by Mr. Siyaram Shahi in support of his plea, I must take note of the fact that there is no pleading in the writ application that the land in question was not being used for any purpose connected with agriculture or horticulture. It is true that a land, which is not capable of being used for agriculture or horticulture purpose, cannot be said to be “land” within the meaning of Section 16(3) of the Act and transfer of such land cannot be governed by the said provision.

17. The decision of this court in the case of *Md. Yasin v. Abdul Rauf* (supra) relied upon by Mr. Shahi has no application in the facts and circumstances of the case as the said case related to urban sites and the court in such circumstance held, considering small area of the land, being just adjacent to a public road, and the fact that portions of the same plot are actually in use for non

agricultural purpose, that Section 16(3) of the Act had no application.

18. The division Bench judgement of this court in case of *Ganesh Prasad v. Judgeshwar Tiwary* (supra), relied upon by learned counsel for the petitioner, also cannot be applied in the facts and circumstances of the case as in that case the court came to a conclusion, referring to the statement in kewala, that the transferred land did not fulfill the description of homestead, as required under the Act.

19. In case of *Kamlakant Goswami v. Balgobind Sah* (supra) this court held that Section 16(3) of the Act had no application as the land being very small plot of land located in bazaar area. As has been noted above, there is no pleading in the writ application that the land in question was being used for purely non agricultural purpose and was located in Bazaar area. The petitioner, therefore, cannot take advantage of the ratio of the division Bench decision of this court in the case of *Kamlakant Goswami v. Balgobind Sah* (supra).

20. As I do not find any pleading in the writ application that the land in question was not being used for any purpose connected with agriculture or horticulture nor there being any recital in the transfer deed to the effect that the land was being purchased for construction of a dwelling house and the land was not

connected with agriculture or horticulture, the plea of the petitioner that the land in question cannot be said to be “land” within the meaning of Section 16(3)/ Section 2(f) of the Act, cannot be accepted.

21. Mr. Siyaram Shahi has lastly submitted that the order in favour of the respondents allowing them pre-emption rights was passed in 1984 but till date the transfer has not been effected in terms of the order, as the respondents themselves are not willing for such transfer. This court has nothing to comment upon such contention.

I do not find any reason to interfere with the orders challenged in the present writ application. This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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