IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8568 of 1995

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Smt.Kusuma Devi, wife of Sri Madan Mohan Sharma, resident of village-Saraiya, P.O.-Saraiya (via-Gundi) P.S.-Barhara (Krishna Garh), District-Bhojpur.

.... Petitioner.

Versus

1. The State of Bihar.
2. Additional Member, Board of Revenue, Bihar, Patna.
3. Additional Collector, Bhojpur at Arrah.
4. Deputy Collector, Land Reforms, Sadar Arrah, District-Bhojpur.
5. Bishwanath Gosai, son of Late Sri Beni Gosai, resident of village and P.O.-Saraiya (via-Gundi) P.S.-Barhara (Krishna Garh), District-Bhojpur.
6. Chanamuni Kuer, wife of Beni Madhav Gosain, resident of village-Saraiya, P.O.-Saraiya (via-Gundi) P.S.-Barhara (Krishna Garh), District-Bhojpur.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Janardan Singh, Adv.

For the Respondent No.5 : Mr. Akhileshwar Prasad Singh, Sr. Adv.

Mr. Bimal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 16-07-2015

Mr. Akhileshwar Prasad Singh, learned senior counsel, appearing for respondent no.5, the pre-emptor states that today he has filed Vakalatnama on behalf of heirs of respondent no.5 who died on 16.07.2008. Learned counsel for the petitioner states that he has no instructions from his client in this regard. As Vakalatnama has already been filed on behalf of heirs of respondent no.5, the heirs of respondent no.5 would be substituted in his place.

2. The petitioner is aggrieved by the order of the learned Additional Member Board of Revenue, as contained in Annexure-1 to this writ application, by which he has allowed the pre-emptor's application, after setting aside the orders of the Additional Collector and the Deputy Collector, Land Reforms (hereinafter in short 'L.R.D.C.'), Sadar Arrah, Bojpur, whereby preemptor's application was rejected.

3. The petitioner is the purchaser. Respondent no.6 is the vendor. The petitioner had purchased in all 12 decimals of land from respondent no.6 on 21.06.1984 and upon its registration respondent no.5 claiming to be adjoining raiyat laid his claim for pre-emption. The matter had travelled up to Board of Revenue and then remanded. While remanding the matter, the learned Additional Member Board of Revenue had directed the L.R.D.C. to appoint a Pleader Commissioner to determine the nature of land and then proceed in accordance with law. It appears that pursuant to the said order, the L.R.D.C. appointed a Pleader Commissioner who submitted a report. Thereafter, serious objections were raised by the petitioner that the report was collusive. Accordingly, the L.R.D.C. decided to personally hold an inspection after notice to the parties. He, accordingly, visited the site in presence of the parties and, thereafter, rejecting the report of the Pleader Commissioner, noticing what he had actually found on the site, passed an order rejecting the claim of the pre-emption on the ground that the land was situated near the urbanized area and was not being used for agriculture. It had Mango, Mahua and Neem trees. It had been purchased for making a dwelling house in vicinity of urbanized area. The pre-emptor, respondent no.5 unsuccessfully appealed and the matter came before the learned Additional Member Board of Revenue once again. The learned Additional Member Board of Revenue allowed the revision and granted the right of pre-emption to respondent no.5. He clearly held that it could not be disputed that respondent no.5 was a boundary raiyat inasmuch as the sale deed itself discloses that the father of respondent no.5 as raiyat on two sides of the land. He noted that as per the revisional survey the land was shown as agricultural land. He took exception to the fact that though on earlier occasion the Board of Revenue had directed for appointment of Pleader Commissioner by the L.R.D.C., the L.R.D.C. should not have carried a personal inspection. This Court does not accept the exception taken to be correct. The L.R.D.C. indeed appointed a Pleader Commissioner but there were serious objections to the correctness of his report. Can it be said that whatever report the Pleader Commissioner files is final and binding on the L.R.D.C. The answer must be no. Therefore, L.R.D.C. was well within his right to himself verify on the spot, whether the report of the Pleader Commissioner was correct or not and what is the true nature of the land. Thus, the learned Additional Member Board of Revenue is not correct that L.R.D.C. by making an inspection himself become a party to the litigation where L.R.D.C. has to base his finding upon the nature of the land then he is well within his right to visit the land, in presence of both the parties, which he did and recorded his finding. The L.R.D.C. has recorded two things. Firstly, there was considerable urbanization in and around the land and secondly there was no agricultural operation being carried out on the land. There was no crop being grown. There were Mango, Mahua and Neem trees but what is more significant is that he had noted that it was a "Firni" land. This has been noted by the learned Additional Member Board of Revenue in his order. He has himself discussed as to what is "Firni" land. He has himself rightly noted that "Firni" land, though capable of agriculture operation, are in fact lands contiguous to the village left for expansion of village and urbanization. They are, therefore, not made subject matter of agricultural land consolidation proceedings. If we keep this in nature then the dominant usage of the land is not agriculture but non-agricultural that would include extending dwelling house. We then have Annexure-7/A, the certificate granted by the village Mukhiya clearly stating that in and around the land of the petitioner are residential houses which only support the fact that the land in consolidation proceeding itself was taken to be “Firni” land and not treated as agricultural land brought in for consolidation.

4. Thus, considering the nature of land and the usage for which it had been purchased, it had not been disputed that the petitioner has built dwelling house thereon. I do not think that the pre-emption can be permitted as pre-emption under Section-16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is in respect of exclusively agriculture land. Thus, the order dated 29.08.1995 of the learned Additional Member Board of Revenue passed in Case No.290 of 1994 is set aside and the orders of the Additional Collector and the L.R.D.C. are restored. The pre-emption of respondent no.5 is dismissed.

5. Accordingly, this writ application is allowed.

(Navaniti Prasad Singh, J.)

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