

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5887 of 2009

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Sudharsan Bhagat son of Rajmangal Bhagat, resident of village Bairawana,
P.O. Lamichaour, P.S.Bhore, District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Gopalganj
 2. Jai Shankar Prasad son of Sitaram Prasad, resident of Village Lamichaour, P.S.Bhoare, District Gopalganj
 3. Chiraya Devi daughter of Late Sheonath Bhagat
 4. Lilawati Devi daughter of Late Sheonath Bhagat
 5. Smt.Lalmati Devi wife of Late Sheonath Bhagat
- All above three are resident of village Bairuna, P.O. Lamichaour,
P.S.Bhore, District Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr.Advocate

For the Respondent No.1 : Mr. Ajay, GA XII

For the Respondent No.2 : Mr.Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 19-08-2015

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, “the Land Ceiling Act”). The petitioner is aggrieved by order dated 30.12.2008 (Annexure-10) passed in Pre-emption Revision No. 364 of 2007 by the Commissioner, Saran Division, Chapara, whereby the aforesaid revision application filed on behalf of the respondent no.2 was allowed and orders passed by the appellate authority and the original authority have been reversed and set aside.

3. Learned senior counsel appearing on behalf of the petitioner submits that in the impugned revisional order, though the Commissioner has noticed the arguments advanced on behalf of

the revisionist as also the opposite parties in that proceeding, but without recording any conclusive findings he has mechanically reversed the orders passed by the original authority as also the appellate authority, and, therefore, on that ground alone, the impugned revisional order is not sustainable in law.

4. Au contraire, learned GA XII, appearing on behalf of the State of Bihar and learned counsel appearing on behalf of the respondent no.2 have contested the matter and have submitted that the DCLR, Hathua while passing the order dated 07.11.2002 in Land Ceiling Case No.13 of 2002-2003 (Annexure-4) has failed to consider that the petitioner had not disclosed the nature of land in LC Form 13 and furthermore, no valid reasons were recorded for coming to the conclusion that the petitioner was the boundary raiyat of the vended plot. It is pointed out that the DCLR, Hathua failed to conduct any enquiry either himself or by any competent authority, though it was pleaded on behalf of the purchaser that pre-emptor is not the boundary raiyat of the vended plot, yet he allowed the claim of pre-emptor. According to learned counsel appearing on behalf of the respondents, if the impugned order is set aside, then a patently illegal order shall get revived. It is also contended that the Additional Collector, Gopalganj while dismissing the appeal of the respondent no.2 had failed to take into consideration the aforesaid aspects of the matter and had mechanically rejected the appeal filed on behalf of the respondent no.2.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that matter requires re-consideration and fresh decision from the stage of original authority. While considering the claim



of pre-emption, the original authority was required to record a conclusive finding of fact that pre-emptor fulfills all the requirements as contained in Section 16 (3) of the Land Ceiling Act. In the present case, it appears that the DCLR though has allowed the claim of pre-emption of the writ petitioner, but has failed to record a conclusive finding of fact that the land in question is agricultural land and the petitioner is the boundary raiyat of the vended plot. Further, objection raised on behalf of the purchaser regarding claim of pre-emption was also required to be gone into, but that has not been done in the present case. The appellate authority has failed to consider the points raised on behalf of the purchaser regarding claim of pre-emption of the writ petitioner and has mechanically affirmed the order passed by the DCLR. The revisional authority though has reversed those two orders by the impugned order dated 30.12.2008, but has not recorded his own finding regarding claim of the parties with respect to vended plot.

6. For the reasons recorded above, the impugned order dated 30.12.2008 (Annexure-10) passed in Pre-emption Revision No. 364 of 2007 by the Commissioner, Saran Division, Chapra as also order dated 07.11.2002 (Annexure-4) passed in Land Ceiling Case No. 13 of 2002-2003 by the DCLR, Hathua and order dated 06.07.2007 (Annexure-7) passed in Land Ceiling Appeal No. 08 of 2005-2006 by the Additional Collector, Gopalganj are hereby set aside and quashed, and the matter is remitted back to the court of learned DCLR, Hathua (Gopalganj) with a direction to decide the claim of pre-emption of the writ petitioner afresh in accordance with law by a reasoned and speaking order. However, before passing any final order, he shall

be obliged to give reasonable opportunity of hearing to the purchaser as also the vendor or his descendants.

7. In order to expedite the matter, the parties are directed to appear before the DCLR, Hathua with a certified copy of the present order within a period of four weeks from today, whereafter he shall fix a firm date and proceed in the matter in accordance with law.

8. The writ petition stands allowed to the extent indicated above, but the parties are left to bear their own costs.

9. It is clarified that any observation made by this Court in the present order is only for the purposes of disposal of the writ petition and this shall not, in any way, cause prejudice to the case of the parties before the statutory authorities regarding claim of pre-emption with respect to the land in question.

(Birendra Prasad Verma, J)

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