

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3013 of 1996

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1. Bishundeo Yadav
 2. Tuleshwar Yadav
 3. Bijay Kumar Yadav
 4. Tej Narayan Yadav

All sons of Late Sitabi Yadav, resident of village & P.O. Belsira, Mauza-Bachhaur, Tola- Belsira, P.S. Fuli Dumar, District- Banka

.... Petitioners

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Banka
4. The Deputy Collector, Land Reforms, Banka
5. Tulo Yadav, s/o Mishri Yadav.

Resident of village and P.O. Belsira, Mauza Bachhaur, Tola-Belsira, P.S. Fuli Dumar, District Banka

6. Shekhar Maharana, s/o Late Mahabir Maharana
7. Ramanuj Maharana
8. Sanjay Maharana.

Both sons of Shekhar Maharana, residents of village and P.O. Belsira, P.S.Fuli Dumar, District- Banka.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bhubneshwar Prasad

For the State : Mr. Manoj Kumar, A.C. to G.A. 10

For private respondents: None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 02-07-2015

Heard learned counsel for the petitioners and learned counsel for the State. No one appears for the private respondents.

The petitioners seek quashing of the order dated 29.12.1995 passed by the Additional Member, Board of Revenue in Revision Case No.392 of 1994 and for consequential direction.

The land in dispute pertains to Khata No.44, Khesra No.129, area 10½ decimals after consolidation and prior to



consolidation, Khata No.44, Khesra No.181 situated in village-Belsira, Mauza-Bachhaur, District- Banka. On 4.11.1986, respondent Nos. 6 to 8 executed a sale deed in favour of the four petitioners with respect to the said land. Thereafter respondent No.5, Tulo Yadav claiming to be a boundary raiyat filed the preemption application. The said application was dismissed by the Deputy Collector, Land Reforms by order dated 27.5.1993 in Land Ceiling Case No. 3 of 1988-89. Aggrieved by the same, the respondent No.5 filed an appeal and by order dated 18.12.1993 passed in Appeal No.2 of 1993-94, the Additional Collector, Banka dismissed the appeal. In the Revision Case No. 392 of 1994, however, the Additional Member, Board of Revenue, Bihar by his impugned order dated 29.12.1995 allowed the revision application. Aggrieved by the same, the petitioners have come to this Court.

It is the admitted position that the petitioners after purchasing the land in question came in possession and constructed their residential house over the said land. It is also admitted that the respondent No.5 is owner of Plot No.181 adjoining the disputed land, which fact is mentioned in the sale deed also showing the name of respondent No.5 on the eastern boundary of the disputed land. The other boundary of the land in question is shown as a road.

The stand of the petitioners was that the land in question



was a Bhith land suitable for the purpose of construction of house, for which purpose the petitioners had purchased it and had also, thereafter, made construction over the same. Their further stand was that the adjoining Plot No.182 of the respondent No.5 itself contains residential house and was described in the Khatian, including Chak Khatian as Makan Mai Sahan.

The petitioners also rely upon the fact that before the filing of the pre-emption petition in 1988 (which was admittedly within time after the registration of the sale deed), the respondent No.5 had filed Title Suit No.64 of 1986 in the court of Munsif, Banka claiming that he was using the disputed land as Rasta and, therefore, he has a right of easement over it and a prayer was made for restraining the petitioners from interfering with the right of the plaintiff, Tulo Yadav. The said title suit was dismissed. The petitioners rely upon the report dated 18.7.1989 of the survey knowing Pleader Commissioner appointed by the Civil Court in the title suit who had given his finding that there was construction of two rooms over the disputed land made by the petitioners.

Learned counsel for the petitioners submits that the land in question is Bhith land which the petitioners had purchased for the purpose of construction of house and actually constructed their house even before the filing of the pre-emption application and thus no pre-

emption could be allowed. It is submitted by him that there is a clear finding in this regard in the report which has been rightly relied upon by the D.C.L.R. in dismissing the preemption application of respondent No.5

It is further submitted that a clear finding has been given by the D.C.L.R. that the land of the respondent No.5, which is adjoining the land in dispute, is a homestead land over which the Makan Mai Sahan of the pre-emptor is there and thus the purpose of pre-emption to prevent fragmentation of land is not fulfilled by allowing pre-emption and for the said reason also, the D.C.L.R. had rightly dismissed the pre-emption application.

It is also submitted by learned counsel that the respondent No.5 having lost the Title Suit No.64 of 1986, his claim of pre-emption ought not to have been allowed.

In support of his contention, learned counsel for the petitioners relies upon three decisions of learned single Judges of this Court. First is the case of Sita Ram Singh and others vs. Additional Member, Board of Revenue and others: 1988 BLJ (NOC) 15, in which it has been held that when a small land is situated just adjacent to a public road, and the fact that portions of the same plot are actually being used for non-agricultural purposes and there is also building standing within the disputed land it would be justified to hold that the

same falls out side the scope of the Act.

The second is the case of Hari Narayan Pandey vs. The State of Bihar and others: 1994 (1) BLJ 281, in paragraph Nos. 13 and 14 of which it has been held as follows:

“13. It is true, as has been contended by Mr. Tiwary that the courts below completely ignored the nature of the land and came to the conclusion that the application for pre-emption should be rejected only on the ground that from the date of purchase, the purchasers had started making construction. But in this case, it has been found as of fact that respondents 5 and 6 have already completed the construction of their residential house and are living therein. It is also an admitted fact that they had purchased the lands in question for the purpose of construction of house. It is also evident that the two deeds of sale had been executed on the same day.

14. In this situation, it is not a fit case in which this Court should exercise its discretionary jurisdiction in favour of the petitioner as in my

opinion, the equity is in favour of respondents

5 and 6.”

The third decision is in the case of Ghanshyam Chaudhary vs. The State of Bihar and others: 2006 (4) PLJR 66. In paragraph Nos. 17 and 18, it has been held as follows:

“17. On a consideration of the aforesaid facts and the various decisions cited by both the sides it is evident that what has to be seen is the position as existing on the date on which the application for pre-emption was made. In this regard there is a clear case of the petitioner from the very beginning that not only the plot of land, a small part of which comprises the disputed land, but the entire area had acquired residential nature and had ceased to be agricultural. The said case of the petitioner finds support in the order of the D.C.L.R. The Board of Revenue disbelieved the enquiry report of the D.C.L.R. at the appellate stage because he had passed the original order it had also disbelieved the statement regarding local inspection having been made, as stated in the order of the D.C.L.R., since he could not find any memo of inspection in the



original records. If that was the position and the local inspection was to be disbelieved as vitiated or treated as non-existent, the Additional Member, Board of Revenue ought to have called for a fresh local inspection by a competent officer and only thereafter the final order should have been passed in revision. By relying only upon the original khatian and revisional survey records the Additional Member has failed to take into consideration the most relevant fact in such a matter as to what was the actual position on the ground on the date when the application for pre-emption was made in 2001, whether the recorded plot of land continued to be agricultural or had ceased to be so and had acquired the nature of residential land, since the claim of the petitioner was not specific to the very small piece of land that he had purchased but pertained to the entire area. This is also the view expressed by this Court in the Shanti Devi's case: 2005 (2)PLJR.631.

18. In the aforesaid facts and circumstances the order dated 31.10.2005 passed by the Additional



Member, Board of Revenue, in Revision Case No.281/02 is quashed and the matter is remitted back to him for deciding the case afresh in accordance with law after having a local inspection made by a suitable officer as to the actual position of the piece of disputed land as well as the area in question as on the date on which the application for pre-emption was filed.”

Learned counsel for the State supports the order of the Board of Revenue.

I have considered the submissions of learned counsels for the parties and perused the orders of the court below as also the materials on the record.

It is not in dispute that the Board of Revenue is the last court of fact and this Court under its writ jurisdiction normally does not interfere with the same unless such finding is shown to be perverse in the sense that it is not based on any material on the record or is contrary to the materials on the record.

From a perusal of the order of the Board of Revenue, I find that there is a consideration of all aspects of the matter unlike the appellate order or even the order of the D.C.L.R. and reliance of the petitioners on the Title Suit No.64 of 1986 has been rejected by the



Board of Revenue after holding that there was no such issue as to whether the disputed land was fit to be pre-empted or was a land within the meaning of Section 2 (f) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 and the only issue involved before the court below was as to whether the plaintiff was entitled to his right of way over the land in dispute which was negated in view of the finding that there was already a Rasta on the northern side of the disputed land.

The Board of Revenue relied on the factual finding in the Pleader Commissioner's report that on the eastern side of the disputed land there were crops of Potato and Mircha and the western portion had been utilized for storing harvested paddy crops and came to the conclusion that these activities are intimately connected with cultivation/agriculture.

With regard to the land of the pre-emptor on the eastern boundary of the disputed land also the Board of Revenue came to the conclusion that it was a homestead land of the pre-emptor connected with agriculture taking into account the fact that the sole occupation of the pre-emptor is cultivation/agriculture. Thus, the Board finally came to the conclusion that the agricultural household of the pre-emptor is land within the meaning of Section 2 (f) of the Ceiling Act and so is the disputed land. On the basis of the said finding, the orders

of the Additional Collector and the D.C.L.R. were set aside and the claim of the pre-emptor was allowed.

From a consideration of the order of the Board of Revenue, I do not find that there is any perversity in the conclusions of facts drawn by the Board of Revenue nor in the legal conclusions which arise on the application of those facts. Once, it is held that the adjoining land of the respondent No.5, pre-emptor having a Makan Mai Sahan was a homestead land within the meaning of Section 2 (f) of the Act, it has to be held that he has the right of pre-emption.

So far as the land in question is concerned, the petitioners themselves do not dispute the fact that they had purchased the vacant land over which they have made construction. Thus, the land in question cannot be held to be a non-agricultural land and the mere description of the same as Bhith land does not support the contention of learned counsel for the petitioners.

So far as reliance by learned counsel for the petitioners on the case of Sita Ram Singh (*supra*) is concerned, the same does not support the stand of the petitioners, as in the said case apart from the land being adjacent to public road there was a clear finding that the portions of the same plot are actually being used for non-agricultural purposes and there was also building standing within the disputed land, whereas in the present matter the building has been brought into

existence by the act of the petitioners themselves.

The petitioners cannot also derive any benefit from Hari Narayan Pandey's case (supra), as in the given facts of the case, this Court does not find it a fit case in which the discretionary jurisdiction can be exercised as was done in favour of the pre-emptor in the said case. The Court also noted that the applications for pre-emption filed by the petitioners were premature.

So far as reliance of learned counsel for the petitioners on Ghanshyam Chaudhary's case (supra) is concerned, the said decision was on entirely different facts and the proposition laid down therein can be of no assistance to the petitioners, as in the said case the matter was ultimately remanded to make a local inspection to find out about the actual position of the piece of disputed land as well as the area in question, whereas the facts in the present matter are not at all in dispute.

Thus, on a consideration of the entire facts and circumstances of the case, this Court does not find any merit in the writ petition and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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