

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10719 of 2006

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Doma Sah, son of Late Pachkauri Sah, Resident of Village – Pakhnari, Post Office – Sheosagar, Police Station – Sheosagar, District – Rohtas.
(Purchaser).... Petitioner

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Rohtas at Sasaram.
4. The Land Reforms Deputy Collector, Sasaram Distt. – Rohtas
.....Respondent 1st set.
- 5 (i) Most. Rajmuna Devi wife of late Ram Nath Sharma
(ii) Shrikrishna Sharma @ Dharmaraj Sharma
(iii) Ram Raj Sharma
(iv) Deo Raj Sharma
(v) Deo Kuar Sharma
(vi) Deo Murat Sharma
All sons of late Ram Nath Sharma R/o village- Pathnari P.S. Sheosagar, P.O. Sheosagar Distt. – Rohtas

.....Respondent 2nd set.

6. (a) Most. Raish Khatoon, W/o Late Jabbad Hussain, Resident of village – Pakhanari, P.S. – Sheosagar, P.O. – Sheosagar, District – Rohtas, Sasaram.

.... (Vendor) Respondent 3rd set.

with

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Civil Writ Jurisdiction Case No. 10718 of 2006

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Doma Sah, son of Late Pachkauri Sah, Resident of Village – Pakhnari, Post Office – Sheosagar, Police Station – Sheosagar, District – Rohtas.
.... (Purchaser) Petitioner

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Rohtas at Sasaram.
4. The Land Reforms Deputy Collector, Sasaram Distt. – Rohtas
.....Respondent 1st set.
- 5 (i) Most. Rajmuna Devi wife of late Ram Nath Sharma
(ii) Shrikrishna Sharma @ Dharmaraj Sharma
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(iv) Deo Raj Sharma
(v) Deo Kuar Sharma
(vi) Deo Murat Sharma
All sons of late Ram Nath Sharma R/o village- Pathnari P.S. Sheosagar, P.O. Sheosagar Distt. – Rohtas

.....Respondent 2nd set.

6. (a) Most. Raish Khatoon, W/o Late Jabbad Hussain, Resident of village – Pakhanari, P.S. – Sheosagar, P.O. – Sheosagar, District – Rohtas, Sasaram.

.... (Vendor) Respondent 3rd set.

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Appearance :

(In CWJC No. 10719 of 2006)

For the Petitioner/s : Mr. Uma Shankar Singh 2

For the Respondent/s : Mr. Kamal Kishore, AC to GP-2

(In CWJC No. 10718 of 2006)

For the Petitioner/s : Mr. Uma Shankar Singh 2

For the Respondent/s : Mr. Kamal Kishore, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-03-2015

Since both the writ petitions pertain to same dispute, both the writ petitions were heard together and are being disposed of by this common order.

Heard Sri Uma Shankar Singh, learned counsel for the petitioner and Sri Kamal Kishore, learned A.C. to Govt. Pleader – 2.

The petitioner has prayed for quashing the order contained in **Annexure '3'** i.e. order dated 07-04-2001 passed in Ceiling Case No. 1 of 1999-2000 & 2 of 1999-2000, whereby, the learned Additional Collector, Rohtas at Sasaram/respondent no. 3 had allowed the appeal and set aside the order of the L.R.D.C., Sasaram, whereby, the pre-emption case, vide Case No. 64 of 1993-94 and 65 of 1996-97 was rejected. The petitioner has also prayed for setting aside the order dated 30-08-2005 passed in Case No. 124 of 2001 and 125 of 2001 by the Member, Board of Revenue, Bihar (**Annexure '5'**), whereby the revision preferred by the petitioner against the order of the Additional

Collector has been rejected.

Short fact of the case is that the petitioner had purchased small piece of land through two registered sale-deeds from respondent no. 6, vide sale-deed dated 24-02-1992, which were registered on 03-02-1993. The land appertains to Chak Khata No. 246/105, Chak Plot No. 1119/1197 and measuring 03 decimals land each. After the land was purchased by the petitioner, the respondent no. 5 filed a petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "Act") claiming to be adjoining raiyat of the plots in question, which were registered as Case No. 64 of 1993-94 and 5 of 1996-97. In the said case, the petitioner appeared and raised objection. It was pleaded that the petitioner, by way of purchasing the land through two sale-deeds, has already become adjoining raiyat. It was further claimed that the land in question was purchased not for agriculture purpose, but for residential purpose. Besides this, a plea was taken that the pre-emption case was fit to be rejected in absence of the vendor. The vendor was admittedly not made party in the pre-emption cases. After the rejection of the pre-emption cases, the pre-emptor preferred an appeal before the Additional Collector, Sasaram, vide Case No. 19 of 1996-97 and 20 of 1996-97 and both the appeals were heard together



and learned Additional Collector, Rohtas, Sasaram allowed the appeal and quashed the order of the L.R.D.C. Being aggrieved with the order of the Additional Collector, the petitioner preferred a revision before the Member, Board of Revenue. Since the order of the Addl. Collector was completely cryptic in nature, the learned Addl. Member, Board of Revenue, by its order dated 10-12-1998 quashed the order of the Additional Collector and remitted back the matter to the court below to decide the objection, which were raised by the petitioner. Thereafter, the learned Additional Collector, vide **Annexure '3'** to the writ petition i.e. order dated 07-04-2001 again allowed the appeal and he affirmed its earlier order. The petitioner thereafter preferred a revision before the Member, Board of Revenue, Bihar however; the Member, Board of Revenue by order dated 30-08-2005 rejected the Revision Case i.e. Case No. 124 of 2001 and Case No. 125 of 2001. Aggrieved with the order of the Additional Collector and the Member, Board of Revenue, the petitioner has approached this Court by filing the present petitions under Article 226 of the Constitution of India.

Learned counsel for the petitioner, at the very outset, submits that since before the L.R.D.C., while filing pre-emption case, the pre-emptor had not impleaded vendor as party, the learned L.R.D.C. had rightly rejected the same. He submits that the defect, which had



occurred at the very initial stage, was not required to be allowed to be removed at subsequent stage i.e. at appellate stage. He submits that ofcourse before the appellate court, notice was issued to the vendor and vendor appeared, but fact remains that pre-emption petition itself was not maintainable and it was rightly rejected. Learned counsel for the petitioner has further argued that the petitioner had purchased very small piece of land and the object of purchasing the land was for residential purpose not for agriculture purpose. He submits that while filing pre-emption case, except vague plea to show that land in question was agricultural, no material was brought on record. However, at the appellate stage, from the side of the pre-emptor, a photocopy of purported certificate issued by the Electricity Deptt. dated 27.9.1997 was brought on record, as if the land was agriculture and it was tried to justify that over the land in question, there was high tension electric pole. It has also been pleaded that by virtue of purchasing land, through two sale-deeds, the petitioner has also become adjoining raiyat and as such, initially the case filed under Section 16(3) of the Act was rightly rejected by the L.R.D.C. However, aforesaid points were not considered either by the appellate court or by the revisional court.

Learned counsel for the State has tried to justify both the impugned orders. He submits that from perusal of the order of the

appellate court as well as the revisional court, it is evident that land in question was agricultural land and as such, both the orders are not required to be interfered with.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. During the pendency of the writ petition, the respondent no. 6 died and thereafter, a substitution petition was filed, which was allowed and notice was directed to be issued. Subsequently, notice was validly served, however; respondent no. 6 preferred not to appear. Thereafter, respondent no. 5 too died and an interlocutory application, vide I.A. No. 7194 of 2013 was filed, which was allowed on 31-10-2013 (in C.W.J.C. No. 10718 of 2006). After the issuance of notices, legal heirs, who were substituted, appeared through their counsel by way of filing vakalatnama. On number of dates, none appeared on behalf of legal heirs of respondent no. 5 and as such, on 12-03-2015, while adjourning the case, due to non-appearance of learned counsel for private respondents, it was indicated that if on the next date, no one appears on behalf of private respondents, the Court may proceed and decide the same. Today again, none has appeared on behalf of legal heirs of respondent no. 5. Accordingly, the matter was heard at length in absence of learned counsel for private respondents.



This Court, besides hearing the parties, has also examined the materials on record, including the impugned orders. Fact remains that while filing pre-emption petition, the pre-emptor had not bothered to implead the vendor as party in the pre-emption case, which was contrary to the statutory provision under Rule 19 of the Bihar Land Reforms Rules. Besides this, the land in question was small piece of land and it was indicated that the said land was purchased for the residential purpose. Before the L.R.D.C., Sasaram, save and except making vague stand that land in question was agricultural land, nothing was brought on record and the learned court below rightly rejected the pre-emption case. However, before the appellate court, altogether new pleas were taken and even certain documents were brought on record to show that land in question was agriculture land.

The Court is of the view that the defect, which had occurred at initial stage while filing pre-emption case, in any event, was not required to be allowed to correct at the appellate stage.

In view of the area of land in question, non-impleading vendor as party and also purchasing the land by the petitioner through two sale-deeds, the Court is of the considered opinion that both the court below i.e. the Additional Collector, Sasaram and the Member, Board of Revenue, Bihar have grossly committed error in ignoring the

pleas of the petitioner.

Accordingly, both the orders i.e. order dated 07-04-2001 passed in Ceiling Case No. 1 of 1999-2000 & 2 of 1999-2000 by the Additional Collector, Rohtas at Sasaram and the order dated 30-08-2005 passed in Case No. 124 of 2001 & 125 of 2001 by the Member, Board of Revenue, Bihar are, hereby, set aside.

Both the writ petitions stand allowed.

(Rakesh Kumar, J.)

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