

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16066 of 2008

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Hari Shankar @ Hari Shankar Prasad son of late Ram Nagina, resident of Village Akhtiyarpur (Barkagaon), P.O. Chandwa, Police Station Udwant Nagar, District Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Additional Collector, Bhojpur.
4. The Deputy Collector Land Reforms Sadar, Arrah.
5. Smt. Maheshwari Devi w/o Sri Pachratan Yadav, resident of Village Akhtiyarpur (Barkagaon) P.O. Chandwa, Police station- Udwant Nagar, District Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md.Waliur Rahman

For the Respondent No.1 to 4 : Mr. AC to GP-10

For the Respondent No.5 : Mr. Anant Kumar Pandey
Mr. Ashok Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 07-08-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of order dated 29.07.2008 (Annexure-3) passed in Case No. 45 of 2006 by the respondent Additional Member, Board of Revenue, Bihar, Patna whereby the revision petition filed on behalf of the respondent no.5 has been allowed and the orders passed by the appellate authority as also the original authority allowing the claim of pre-emption of the petitioner with respect to land in question have been reversed.

3. Brief facts relevant for this case is that the respondent no.5 purchased a piece of land bearing plot no. 1076 appertaining to khata no. 233 area 12 decimals situate at village Akhtiyarpur, District- Bhojpur through a registered deed of sale dated 25.02.2004. The



petitioner, claiming to be an adjoining raiyat of the vended plot, filed an application under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short “Land Ceiling Act”), which gave rise to Ceiling Case No. 2 of 2004-05. After hearing the parties including the respondent no.5 and considering the materials produced by them, the claim of pre-emption of the petitioner was allowed by the order dated 27.08.2004 (Annexure-1) and the respondent no.5 was directed to transfer the land in question to the petitioner. The respondent No.5, being aggrieved by the aforesaid order, filed Ceiling Appeal No. 13 of 2004, which was finally dismissed by the respondent Additional Collector, Bhojpur by his order dated 09.01.2006 (Annexure-2) holding therein that the appellant therein and the respondent no.5 herein has not produced any reliable paper to show and prove that she is a landless person. The respondent no.5 thereafter filed revision application before the Board of Revenue, Bihar, giving rise to Case No. 45 of 2006, which has been allowed by the impugned revisional order dated 29.07.2008 (Annexure-3).

4. Learned counsel appearing on behalf of the petitioner submits that the original authority as also the appellate authority on consideration of the materials available on record had allowed the claim of pre-emption raised on behalf of the petitioner with respect to vended plot. He further submits that plea that the respondent no.5 is a landless person was not at all raised on behalf of the respondent no. 5 before the original authority. Therefore, on that ground alone the Board of Revenue could not have reversed the order passed by the original authority and the appellate authority, or, at best, could have remanded the matter for holding enquiry and for passing fresh order.

5. Learned State counsel, appearing on behalf of the

respondent no. 1 to 4, and the learned counsel appearing on behalf of the respondent no.5 have opposed the prayer and have supported the impugned revisional order. According to them, since the respondent no.5 is a landless person, therefore, the pre-emption application filed on behalf of the petitioner with respect to vended plot was not maintainable and the writ petition is liable to be dismissed.

6. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the entire matter requires re-consideration and fresh decision from the stage of the original authority i.e. the respondent D.C.L.R., Sadar, Ara.

7. It is now well settled that pre-emption application under Section 16(3) of the Land Ceiling Act shall not be maintainable in case the purchaser is a landless person or having less than one acre of land, but this is an issue of fact, which is required to be gone into at the very threshold i.e. before the original authority. Indisputably, this issue was raised on behalf of the respondent no.5 for the first time before the appellate authority, which was not accepted, but on same set of materials produced by her, the revisional authority has accepted such claim and dismissed the pre-emption case. In fact, whether the respondent no.5 is a landless person or not is an issue of fact, which is yet to be decided on the basis of reliable materials/ evidence produced by the parties. If the respondent no.5 is not a landless person or having less than one acre of land, then in that case the respondent D.C.L.R. as also the respondent Additional Collector have rightly allowed the claim of pre-emption of the writ petitioner, but the aforesaid orders have been reversed by the revisional authority without getting an enquiry conducted that the respondent no.5 is a landless person.

8. In above view of the matter, the impugned revisional

order dated 29.07.2008 passed in Case No. 45 of 2006 (Annexure-3) as also the original order dated 27.08.2004 (Annexure-1) passed by the respondent D.C.L.R., Sadar, Ara and the appellate order dated 09.01.2006 (Annexure-2) passed by the respondent Additional Collector, Bhojpur are hereby set aside and quashed and the entire matter is remitted back to the respondent D.C.L.R., Sadar, Ara with a direction to decide the claim of the petitioner afresh after giving an opportunity of hearing to all the parties regarding the claim of pre-emption raised in that proceeding. The petitioner as also the respondent no.5 shall be at liberty to produce their evidence/ materials in support of their respective case, which shall be gone into by the respondent D.C.L.R., Sadar Ara and only thereafter, the matter shall be decided afresh in accordance with law.

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

(Birendra Prasad Verma, J)

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