

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3278 of 2007

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Sikendra Yadav @ Sikandar Yadav Son of Kamli Yadav, Resident of
Village Bhawanipur Police Station Gopalpur District Bhagalpur.

.... **Petitioner**

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Old Secretariat Building at Patna.
3. The Additional Collector, Bhagalpur within the district of Bhagalpur.
4. The Deputy Collector Land Reforms at Naugachhia within the district of Bhagalpur.
- 5 (i) Anita Devi widow of Late Suresh Prasad Yadav
- (ii) Akhil Yadav
- (iii) Nikko Yadav, both sons of Late Suresh Prasad Yadav. All 5(i) to 5(iii) residents of Village Bhawanipur, P.S. Gopalpur District Bhagalpur.
- (iv) Beauty Devi, wife of Pappu Yadav, village Nandanpur P.S. Baushi District Arariya.
- (v) Bando Devi wife of Kundan Yadav, resident of Sultanganj P.S. Sultanganj District Bhagalpur.
- Both 5(iv) & 5(v) married daughters of Late Suresh Prasad Yadav.
6. Shri Narayan Pandey Son of Late Ganesh Pandey, R/o Village Bhawanipur, P.S. Gopalpur, District Bhagalpur.

.... **Respondents**

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha
Mr. Brajesh Kumar Singh
For the Respondent/s : A.C. to Standing Counsel 10
Mr. Sunil Kumar Singh-2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 10-02-2015

Heard learned counsel for the petitioner, learned
A.C. to Govt. Pleader - 10 as well as Sri Sunil Kumar Singh,
learned counsel, who has appeared on behalf of respondent
nos. 5(i) to 5(v), who are legal heirs of boundary raiyat,

namely; Suresh Prasad Yadav, who died during the pendency of the writ petition.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of following orders:-

(i) order dated 16-11-2006 passed by the respondent no. 2/Additional Member, Board of Revenue in Revision Case No. 285 of 2005,

(ii) order dated 31-10-2005 passed by the Additional Collector, Bhagalpur in L.C. Appeal Case No. 2 of 2005, and

(iii) order dated 12-04-2005 passed by the Deputy Collector Land Reforms, Naugachhia (in short "D.C.L.R.") in Original Case No. 13 of 2004-05, whereby, the claim of pre-emption of the adjoining raiyat namely Suresh Prasad Yadav was allowed.

Short fact of the case is that the petitioner purchased a piece of land measuring 0.86 ½ acres from the respondent no. 6. The land appertaining to Khata No. 228, Plot No. 2274, Mouza Bhawanipur, Police Station Gopalpur, District Bhagalpur was purchased by the petitioner. The original respondent claiming right of pre-emption, filed a petition under Section 16(3)(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. It has been pleaded that the petitioner thereafter appeared and filed show cause raising number of objections to refute the claim of pre-emption of original respondent no. 5. The vendor of the land in question also appeared and filed



an affidavit indicating therein that prior to executing sale-deed in favour of the petitioner, the vendor had offered the land for its purchase to the original respondent no. 5, but since respondent no. 5 refused, he was constrained to transfer the land to the petitioner regarding whom it was stated that he was under raiyat of the vendor. Considering the materials on record, the D.C.L.R. allowed the pre-emption case, which was challenged by the petitioner before the appellate authority. The appellate authority too rejected the same. Both the orders i.e. order of the D.C.L.R. and appellate authority was challenged before the Member Board of Revenue, vide Case No. 285 of 2005. The learned Member Board of Revenue, by its order dated 16-11-2006, rejected the same.

Sri Arun Prasad Ambastha, learned counsel for the petitioner submits that the case of pre-emption was required to be rejected on three counts. Firstly, it was argued that the petitioner was under raiyat of the vendor; secondly, the petitioner at the time of purchase was landless person and thirdly; the vendor of the land in question before transferring the land to the petitioner had made specific offer to purchase to the original respondent no. 5, which was refused and only thereafter, the sale-deed was executed in favour of the



petitioner. He submits that before the lower court, affidavit was brought on record by the vendor to show that vendor had offered the land firstly to the boundary raiyat/ adjoining raiyat i.e. respondent no. 5. Relying on a Judgment of the Apex Court, reported in **Bihar Bar Council Journal 1996 Supreme Court 1 (Ram Chhapit Yadav Vs. Addl. Member, Board of Revenue & Ors.)**, he submits that in the said case, even though vendor had not appeared before the court below, an affidavit of vendor was brought on record to show that vendor before transferring the land had offered the land to the adjoining raiyat and only after refusal, it was transferred to the purchaser. He submits that the Apex Court had categorically held that such affidavit was not required to be ignored. Sri Ambastha reiterates that since the petitioner was landless person, immediately after purchasing the land, he got his house constructed over the land in question and he is residing there. Learned counsel for the petitioner has drawn my attention to specific statement made in paragraphs 12, 13, 15, 18 and 22 of the writ petition, wherein it has been indicated that the vendor had offered the land firstly to the original respondent no. 5 and only after refusal, the land was sold to the petitioner. He has also referred to a statement made in paragraph 12 of the writ petition to show that the



petitioner was under raiyat of the vendor and he was landless person. Even though, specific statement has been made in the writ petition, no such rebuttal has been made by the legal heirs of the respondent no. 5, who have appeared and filed show cause. Although, legal heirs of respondent no. 5 have filed show cause, the statement made in the writ petition was not refuted. It has been reiterated that before all the three courts, aforesaid pleas were taken, but those pleas were simply ignored. According to learned counsel for the petitioner, all the three orders are liable to be set aside.

Sri Sunil Kumar Singh, learned counsel for legal heirs of respondent no. 5, while opposing the prayer of the petitioner, submits that before the original court mainly stand was taken by the purchaser that he was under raiyat of the land owner. He further submits that the punchnama, which was brought on record before the court below, has got no evidentiary value. He submits that had the petitioner was under raiyat of vendor and remained as such for more than twelve years, he would have filed proper petition under the Bihar Tenancy Act, 1885 for declaration of occupancy right, which has not been done and as such, a bald statement that he was raiyat of the land may not be taken note of. He further submits that ofcourse, number of pleas have been

taken, but all such pleas were not taken before the court below. Only at revisional stage, such pleas were taken and as such, revisional court, after noticing, had rejected the same.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The fact remains that in this case, show cause has been filed on behalf of substituted heirs of respondent no. 5, but in the show cause, no specific averment has been made controverting the statement made in the writ petition, particularly; the statement made in the paragraphs 12, 13, 15, 18 and 22 of the writ petition. Moreover, from the materials on record, particularly; first show cause filed by the petitioner before the D.C.L.R. makes it clear that a specific stand was taken that the petitioner was under raiyat of the vendor. Besides this, affidavit of vendor was also brought on record, which in clear terms states that the petitioner was bataidar of the land-owner and it further makes it clear that he had offered the land firstly for its sale to the original respondent no. 5, which was refused. The Court is conscious of the fact that right of pre-emption is a weak right, which can be defeated through process of law.

In view of the fact that the stand, which was taken before court below, was completely ignored, the Court is of

the opinion that all the three orders are required to be set aside.

Accordingly, order dated order dated 16-11-2006 passed by the respondent no. 2/Additional Member, Board of Revenue in Revision Case No. 285 of 2005, order dated 31-10-2005 passed by the Additional Collector, Bhagalpur in L.C. Appeal Case No. 2 of 2005, and order dated 12-04-2005 passed by the Deputy Collector Land Reforms, Naugachhia in Original Case No. 13 of 2004-05 are, hereby, set aside and the writ petition stands allowed.

(Rakesh Kumar, J.)

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