

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6258 of 1992

- =====
1. Bishwanath Singh
 2. Ram Nath Singh sons of Late Ram Nagina Singh
 3. Singhashan Singh
 4. Darap Singh sons of Late Shivnandan Singh
 5. Deo Kumar Singh son of Ganesh Singh
 6. Saraswati Kuer widow of late Sudama Singh
 7. Jai Prakash Singh
 8. Ajit Kumar Singh, Both sons of (minor) of Late Sudama Singh, under the guardianship of their natural mother Saraswati Kuer.
 9. Nrmala Kumari
 10. Pushpa Kumari both minor daughters of late Sudama Singh under the guardianship of their natural mother Saraswati Kuer.
 11. Shyam Bihar Singh
 12. Lallan Singh, Both sons of Indrasan Singh
 13. Lal Babu Singh son of Late Nandjee Singh
 14. Deo Nath Singh son of Ganesh Singh

Resident of village-Damanpura P.S. Raghunathpur, District-Siwan.

Pre-emptor....opposite party Petitioners
Versus

1. Brajesh Kumar Singh
2. Kamaldeo Kumar Singh both sons of late Phudena Singh
Both resident of village Dhamanpura, P.S. Raghunathpur, District-Siwan.
Purchaser Appellant Respondents 1st Set.
3. Bandhu Sah son of late Murat Sah,Vendor/opp. party/Respondent 2nd Set.
4. Land Reforms, Deputy Collector, Siwan.
5. Collector, Siwan.
6. Additional Member Board of Revenue, Bihar, Patna.
7. State of Bihar.....Respondents 3rd set.
8. Radha Mohan Singh son of late Nandjee Singh.
9. Sudarshan Singh son of Indrasan Singh
both resident of village Dhamanpura P.S. Raghunathpur District-Siwan.
10. Rukmini Devi daughter of late Ram Nagina Singh and wife of Vidya Sagar Singh, resident of Village Sasaraon P.S. Araon, District Siwan.
11. Laxmi Devi daughter of late Ram Nagina Singh and wife of Rajbanshi Singh, resident of Village Manikpur P.S. Maniar district Balia (Uttar Pradesh).
12. Raj Kalo Devi w/o Hardeo Singh, resident of village- Damanpura P.S. Raghunathpur, District-Siwan

Opposite party 2nd set/Respondent 4th set
with

=====

Civil Writ Jurisdiction Case No. 6259 of 1992

=====

1. Bishwanath Singh
2. Ram Nath Singh sons of Late Ram Nagina Singh
3. Singhashan Singh
4. Darap Singh both sons of Late Shivnandan Singh
5. Deo Kumar Singh son of Ganesh Singh
6. Saraswati Kuer widow of late Sudama Singh
7. Jai Prakash Singh
8. Ajit Kumar Singh
Both sons (minor) of Late Sudama Singh, under the guardianship of their

natural mother Saraswati Kuer.

9. Nirmala Kumari

10. Pushpa Kumari both minor daughters of late Sudama Singh under the guardianship of their natural mother Saraswati Kuer.

11. Shyam Bihari Singh

12. Lallan Singh, Both sons of Indrasan Singh

13. Lal Babu Singh son of Late Nandjee Singh

14. Deo Nath Singh son of Ganesh Singh

Resident of village-Damanpura P.S. Raghunathpur, District-Siwan.

Pre-emptor....opposite party Petitioners
Versus

1. Tej Narayan Singh

2. Lakshman Singh both sons of late Fulena Singh

Both resident of village Dhamanpura, P.S. Raghunathpur, District-Siwan.

Purchaser Appellant Respondents 1st Set.

3. Budhan Sah son of late Murat Sah,

...Vendor/opp. party/Respondent 2nd Set.

4. Land Reforms, Deputy Collector, Siwan.

5. Collector, Siwan.

6. Additional Member Board of Revenue, Bihar, Patna.

7. State of Bihar.....Respondents 3rd set.

8. Radha Mohan Singh son of late Nandjee Singh.

9. Sudarshan Singh son of Indrasan Singh

both resident of village Dhamanpura P.S. Raghunathpur District-Siwan.

10. Rukmini Devi daughter of late Ram Nagina Singh and wife of Vidya Sagar Singh, resident of Village Sasaraon P.S. Araon, District Siwan.

11. Laxmi Devi daughter of late Ram Nagina Singh and wife of Rajbanshi Singh, resident of Village Manikpur P.S. Maniar district Balia (Uttar Pradesh).

12. Raj Kalo Devi w/o Hardeo Singh, resident of village- Damanpura P.S. Raghunathpur, District-Siwan

Opposite party 2nd set/Respondent 4th set

=====

Appearance :

For the Petitioner/s : Ms. Mallika Mazumdar

For the Respondents No. 1 and 2 : Dr. Uma Shankar Prasad, Sr. Advocate

Mr. Lal Babu Keshari

Mr. Kamla Kant Tiwary.

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 07-07-2015

1. Heard Ms. Mallika Mazumdar, learned counsel appearing on

behalf of the petitioner in both the cases and Mr. Umashankar Prasad,

learned Senior Counsel appearing on behalf of the Respondents No. 1

and 2.

2. The 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 'Act') with respect to the same plot of land appertaining to R.S. Plot No. 246 and 253 of Khata No. 51 of Mauza Dawanapura in the district of Siwan.

3. Respondents No. 1 and 2, through two separate sale deeds dated 14.09.1983 purchased half of the said plot which belonged to one Budhan Sah. The petitioners filed two separate applications claiming preferential right to purchase the said land under Section 16(3) of the Act on 19.11.1983, on the ground that they were adjoining Raiyats. It appears that with respect to rest of the land of the said R.S. Plot No. 246 and 253, said Budhan Sah executed three sale deeds on 01.10.1983 in favour of the respondents No. 1 and 2.

4. In the Pre-emption proceeding before the Deputy Collector, Land Reforms, the petitioners took a plea that subsequent transactions dated 01.10.1983 by Budhan Sah in favour of the Respondents No. 1 and 2 were *Farzi* and sham transactions inasmuch as, he did not have the right to transfer the said land. It was their case that the said land belonged to Dhani Gond, uncle of Budhan Sah. The said Dhani Gond is said to have executed a *zerpeshgi* deed in favour of the one Jagannath Singh and the same having not been redeemed, Jagannath Singh remained in possession over the land, said to have been transferred by Budhan Sah in favour of the Respondents No. 1 and 2,

by subsequent sale deeds executed on 01.10.1983.

5. The Deputy Collector, Land Reforms appears to have sought for a report from the Circle Officer, Raghunathpur who in his report dated 24.07.1984 recorded that the lands purported to have been transferred through sale deeds dated 01.10.1983 by Budhan Sah were in fact in possession of Jagannath Singh in view of the *zerpeshgi* deed executed in his favour by said Dhani Gond, who was the owner of the said land.

6. From the order of the Deputy Collector, Land Reforms, it appears that even respondents No. 1 and 2 did not dispute the claim of the petitioners that they were adjoining Raiyats of the vended land, purchased by them, through two sale deeds dated 14.09.1983. The Deputy Collector, Land Reforms, on two separate applications under Section 16(3) of the Act, filed by these petitioners giving rise to case No. 41 of 1983 and 42 of 1983, taking into account the report of Circle Officer and the materials brought on record by the contesting parties, came to a finding that the subsequent transactions dated 01.10.1983 were sham and Farzi transactions, inasmuch as the said Budhan Sah did not have right, title and interest to execute sale deeds, for transfer of the said land in favour of the Respondents No. 1 and 2. Respondents No. 1 and 2, thereafter, preferred appeals against the order of the Deputy Collector, Land Reforms. The Collector, Siwan by his order dated 19.09.1989 rejected the appeal, concurring with the



findings of fact arrived at by the Deputy Collector, Land Reforms. From the order passed by the Collector, it appears that Respondents No. 1 and 2, who were appellants before him tried to linger disposal of the appeal, somehow or the other, which compelled him to do ex-parte hearing, before passing the said order dated 19.09.1989. Revision applications were thereafter filed before the Member, Board of Revenue by Respondent No. 1 and 2 which were numbered as Case No. 576 of 1989 (Brajesh Kumar Singh Vs. Budhan Sah & Ors.) and 577 of 1989 (Tej Narayan Singh Vs. Budhan Sah & Ors.). The matter was heard by learned Additional Member, Board of Revenue, who vide order dated 29.06.1992, set aside the orders passed by the Collector in both the cases. The orders dated 29.06.1992, so passed by the Additional Member, Board of Revenue, is under challenge in the present writ applications.

7. Ms. Mallika Mazumdar, learned counsel appearing on behalf of the petitioner has submitted that revisional authority, without making any discussion as regard finding of facts arrived at by the Court of Deputy Collector, Land Reforms and the Collector, disturbed the findings and set aside their orders. She has contended that the claim on behalf of the respondents No. 1 and 2 that they became adjoining Raiyats of the vended land by virtue of execution of subsequent sale deeds dated 01.10.1983, could be accepted by the Revisional Court only after coming to a specific finding on the basis

of cogent materials that said Budhan Sah had in fact right, title and interest to execute the sale deeds. She has submitted accordingly that the revisional order is unsustainable.

8. Mr. Uma Shankar Prasad, learned Senior Counsel appearing on behalf of Respondents No. 1 and 2, defending the order passed by learned Additional Member, Board of Revenue has submitted that there is no illegality in the order passed by the Additional Member, Board of Revenue, in the absence of any dispute that prior to the date when the petitioners filed their pre-emption application under Section 16(3) of the Act on 29.11.1983, Respondents No. 1 and 2 had already acquired the status of adjoining Raiyats, by purchasing rest of the land of R.S. Plot No. 246 and 253, which was adjacent to the vended land. He has accordingly contended that the Revisional Authority rightly set aside the orders of the Collector.

9. From the pleadings on record and submissions made on behalf of the parties, I find that there is no dispute about the fact that the petitioners were adjoining Raiyats of the vended land, which Respondents No. 1 and 2 had purchased from Budhan Sah through two separate sale deeds executed by Budhan Sah. There appears to be no dispute over the fact that petitioners were adjacent to both the vended lands, which were subject matter of consideration before the Deputy Collector, Land Reforms in the proceeding under Section 16(3) of the Act.



10. There could not have been any difficulty in accepting the plea made on behalf of the respondents No. 1 and 2 that they acquired the said status of adjoining Raiyats by virtue of sale deeds executed in their favour on 01.10.1983 i.e. prior to filing of application under Section 16(3) of the Act on 14.09.1983, had there been no finding on the basis of the materials before the Deputy Collector, Land Reforms and the Collector that the said transactions were Farzi transactions and the land said to have been sold through sale deeds dated 01.10.1983, were in fact in possession of one Jagannath Singh and were not in possession of Budhan Sah, who had executed the sale deeds on 01.10.1983.

11. In my opinion, if the finding of the Deputy Collector, Land Reforms and the Collector, Land Reforms to the effect that Budhan Sah did not have right, title and interest to transfer the said land is correct, the claim of Respondent No. 1 and 2 that they acquired status of adjoining Raiyat by virtue of sale deeds executed on 01.10.1983 by Budhan Sah, cannot be sustained. Before upsetting the order of the Collector, Siwan by the impugned orders dated 29.06.1992, the Additional Member, Board of Revenue was required to go into this crucial aspect which failed to do.

12. I, therefore, find merit in the submission made on behalf of the petitioners that the impugned order dated 29.06.1992 passed by the Additional Member, Board of Revenue in case No. 576 of 1989

and 577 of 1989 are unsustainable.

13. In view of the discussions as above, these writ applications deserve to be allowed and are accordingly allowed. The orders dated 29.06.1992 passed in case No. 576 of 1989 and Case No. 577 of 1989 by learned Additional Member, Board of Revenue are set aside.

14. The matter is remanded back to the learned Member, Board of Revenue for passing an order afresh, in accordance with law, after giving the necessary parties, due opportunity of hearing. This Court expects that disposal of the matter shall be expedited and the dispute between the parties is brought to a logical conclusion within a reasonable time, preferable, within six months from the date of receipt/production of a copy of this order.

15. This application stands allowed with the observation and direction as above.

16. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Saif/-

U			
---	--	--	--