IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.275 of 2007

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Gopal Mahto, son of late Dubar Mahto resident of village Koshila Maher P.S. Bodh Gaya, District Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. the Additional Member, Board of Revenue, Bihar, patna
3. the Collector, Gaya
4. the Deputy Collector Land Reforms Sadar Gaya, district Gaya

………..respondent 1st set

5. Umesh Prasad son of Jagdish Mahto
6. Mukesh Prasad son of Jagdish Mahto
7. Rupesh Prasad son of Jagdish Mahto

NO. 5 to 7 residents of village Koshila Maher, P.S. Bodh Gaya, District Gaya

8. Pandit Shreekant Mishra, son of Late Parmeshwar Mishra
9. Uday Kant Mishra, son of Late Ganga Dayal Mishra
10. Sachita Nand Mishra, son of late Sheonandan Mishra

No. 8 to 10 residents of village Koshila Maher, P.S. Bodh Gaya, District Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat
Mr. Ved Prakash Srivastava

For the Respondent/s : Mr. Nagendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 19-05-2015

Heard Sri Mahesh Narayan Parbat, learned senior counsel for the petitioner, learned AC to GP No. 2 as well as Sri Nagendra Kumar Singh, learned counsel, who has appeared on behalf of the respondent 2nd set /purchaser.

The petitioner, claiming right of pre-emption over the land in question, had filed a petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, claiming that he was adjoining raiyat. However, the said pre-emption case was rejected by the D.C.L.R. on the objection raised by the purchaser. The purchaser has claimed that he was earlier Bataidar of the land in question and second ground was taken that the vendor had initially offered the land to the petitioner, but since he refused to purchase the land, it was transferred to the respondent 2^{nd} set. On considering the facts and circumstances, the learned D.C.L.R. rejected the pre-emption case, which was assailed by the petitioner before the appellate authority and the appellate authority allowed the appeal preferred by the petitioner. The purchaser /respondent 2^{nd} set aggrieved with the order of the appellate authority filed a Revision vide Revision Case No. 193 of 2002 before the Additional Member, Board of Revenue. A plea has been taken by learned counsel for the petitioner that Revision was preferred in the year 2002, and thereafter, on several dates, argument was advanced on behalf of the petitioner but it was not decided. In the meanwhile, court changed on number of occasions and finally, the Additional Member, Board of Revenue by the order dated 20.1.2006 in absence of the petitioner, without assigning any reason, has allowed Revision and set aside the order of the appellate authority. It has been pleaded that if for the time being it is assumed that the petitioner was not present at the time of hearing, fact remains that before the Revisional Court all the materials were available on record, however, the learned Additional

Member, Board of Revenue without discussing any material has allowed the Revision petition only on the ground that petitioner failed to participate during hearing of the Revision petition. In view of the facts and circumstances, it is submitted that the order impugned being non- speaking and passed without hearing the petitioner is liable to be set aside .

Learned counsel for the purchaser has opposed the prayer of the petitioner. He submits that from the order impugned it is evident that number of opportunities were granted to the petitioner but since he failed to participate in the proceeding, there was no option to the Additional Member, Board of Revenue, but to decide the case even in absence of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of the impugned order i.e. the order dated 20.1.2006, the court is satisfied that the learned Additional Member, Board of Revenue has not assigned any reason. Only on the ground that petitioner failed to participate in the proceeding has set aside the order of the appellate authority and allowed the Revision. The court is of the opinion that petitioner is required to be given a chance of detailed hearing and thereafter, the Additional Member, Board of Revenue, may pass order at least assigning succinctly reasons for deciding the issue.

Accordingly, the order dated 20.1.2006 passed by the Additional Member, Board of Revenue being non -speaking and passed in absence of the petitioner, is hereby set aside and the matter is remitted back to learned Additional Member, Board of Revenue to hear both the parties and pass appropriate order in accordance with law.

Since this order has been passed in presence of both the parties, it is required that petitioner and respondents may immediately appear before the Additional Member, Board of Revenue and participate in the proceeding.

With above observations, the writ petition stands disposed of.

(Rakesh Kumar, J)

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