

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10899 of 2007

1. Prashant Kumar Gupta

2. Deepak Ratan,

Both sons of late Rajendra Prasad, resident of village Raghubirchak @ Rampati, P.S.Rajnagar, District Madhubani through their general Power of Attorney-Holdere Shiv Chandra Prasad son of late Ram Bahadur Prasad, resident of village Baishakhwa, P.O. Rajpur, P.S.Kesharia, District West Champaran, presently resident of village and P.O. Rampati, P.S.Rajnagar, District Madhubani, Power of Attorney Holder executed by petitioners No. 1 and 2, dated 14.11.2005 and 17.11.2005, respectively.

.... Petitioner/s

Versus

1. The State of Bihar

2. Commissioner Darbhanga Division, Darbhanga

3. Additional Collector, Madhubani, District Madhubani

4. D.C.L.R. Sadar, Madhubani, District Madhubani

5. Smt. Janki Devi wife of Sukhdeo Choudhary, resident of village Rampati, Tole L.N.Nagar, P.O. Ram Pati, P.S.Rajnagar, District Madhubani

6. Dhandeo Choudhary son of Late Gultain Choudhary, resident of village Rampati Tole L.N.Nagar, P.O. Ram Pati, P.S.Rajnagar, District Madhubani

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dvivedi, Sr.Advocate
Mr. Ranjan Kr.Dubey, Advocate
Mr.Rakesh Chandra, Advocate

For the Respondent Nos. 1 to 4 : Mr. Ajay, GA XII
Mr.Pratak Kr.Sinha, AC to GA XII
Mr.Rakesh Kumar, AC to GA XII

For the Respondent No.5 : Mr.Subhash Kumar Jha, Advocate

For the Respondent No.6 : Mrs. Sangeeta Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 13-08-2015

Heard the parties.

2. The matter at issue is the validity of the claim of pre-emption of the respondent no.5 under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land), Act, 1961 (in short, “the Land Ceiling Act”) with respect to the lands under dispute.



3. In the peculiar facts of the case, the vendors of the lands under dispute have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 20.01.2006 (Annexure-1) passed in Land Ceiling Case No. 3/05-06 by the respondent DCLR, Sadar, Madhubani allowing the claim of pre-emption of the respondent no.5 with respect to the vended plots of land. They are also aggrieved by the appellate order dated 30.11.2006 (Annexure-2) passed in Appeal Case No. 36 of 2006 by the respondent Additional Collector, Madhubani and order dated 25.05.2007 (Annexure-3) passed by the respondent Commissioner, Darbhanga Division in Land Ceiling Revision Case No. 01/04 of 2006-07, whereby the appeal and the revision respectively filed on behalf of Power of Attorney Holder of the petitioners have been dismissed and order passed by the original authority i.e. DCLR, Sadar, Madhubani has been affirmed.

4. Learned senior counsel appearing on behalf of the petitioners has raised a very short question, while assailing the validity and correctness of the impugned orders as contained in Annexures- 1, 2 and 3 passed by the statutory authorities. According to him, the sale made by the petitioners on 08.09.2005 through four registered sale deeds with respect to lands in question in favour of respondent no.6 was itself nullified by virtue of order dated 23.11.2005 (Annexure-7) passed by the Presiding Officer, Permanent Lok Adalat, Madhubani; therefore, claim of pre-emption raised on behalf of the respondent no.5 was/is not maintainable and has illegally been allowed by the respondent DCLR, Madhubani and affirmed by the appellate as also the revisional authority. It is contended that these factual aspects of the matter were simply not taken into consideration by the statutory authorities and therefore the

impugned orders are liable to be set aside and quashed by this Court.

5. Learned GA XII, appearing on behalf of the respondent nos. 1 to 4, has not disputed the factum of the order passed by the Permanent Lok Adalat nullifying the impugned sale made by the petitioners in favour of respondent no.6 on the basis of the compromise arrived at between the parties.

6. Learned counsel appearing on behalf of the respondent no.5 has opposed the prayer and has supported the impugned orders. According to him, the respondent no.5, was the adjoining raiyat of the vended plots. Therefore, she filed the pre-emption case before the respondent DCLR. The petitioners in order to defeat the claim of pre-emption of the respondent no.5 filed Title Suit No. 90 of 2005 before the Permanent Lok Adalat, Madhubani for setting aside the sale deeds made in favour of the respondent no.6, which was allowed on the basis of the compromise arrived at between the parties. According to him, the respondent no.6 had sufficient money for paying the consideration money to the petitioners, therefore, the sale made by the present petitioners could not have been nullified on basis of compromise. It is pleaded that the claim of pre-emption has rightly been allowed by the respondent DCLR, which was not interfered with by the appellate authority as well as the revisional authority. However, he has not been able to dispute that the order dated 23.11.2005 passed by the Permanent Lok Adalat, Madhubani (Annexure-7) nullifying the sale deeds executed in favour of respondent no.6 has attained its finality.

7. After having heard the parties and on consideration of the materials available on the record, this Court finds that it is true that on 08.09.2005, the petitioners had executed four sale deeds in favour of respondent no.6 with respect to vended plots. Respondent



no.5 claiming to be of the boundary raiyat filed Pre-emption Case No. 3 of 2005-06 before the respondent DCLR, Sadar, Madhubani raising her claim of pre-emption with respect to the vended land, but before any final order could have been passed in that pre-emption case, the petitioners filed Title Suit No. 90 of 2005 before the Permanent Lok Adalat, Madhubani for setting aside the sale deeds on the ground that the consideration money was not paid to them by the respondent no.6. The aforesaid title suit was finally disposed of by order dated 23.11.2005 in view of compromise arrived at between the parties and the sale made by these petitioners in favour of the respondent no.6 with respect to the vended plots of land were held to have been cancelled. It is not in dispute that the order passed by the Permanent Lok Adalat, Madhubani by order dated 23.11.2005 (Annexure-7) has attained its finality, as none of the parties challenged that order before any other higher forum/court.

8. In the present writ petition, the respondent no.6 has also filed a counter affidavit and stated in paragraph 10 that in view of award/order passed by the Permanent Lok Adalat, Madhubani, the sale deeds executed in his favour by the petitioners were cancelled and he will have no interest with respect to the vended lands. Though the respondent no.5 has entered her appearance through her counsel and though the matter is pending before this Court since 2007 but till date no counter affidavit has been filed on her behalf controverting the averments made in the writ petition. Even no rejoinder affidavit has been filed on behalf of the respondent no.5 to the counter affidavit filed on behalf of the respondent no.6. Hence, averments made in the writ petition and the counter affidavit filed on behalf of the respondent no.6 have to be accepted to be correct.

9. From the facts noticed above, it is apparent that the

sales made by the petitioners on 08.09.2005 were cancelled on 23.11.2005 by virtue of award/order passed by Permanent Lok Adalat, Madhubani. Therefore, no order could have been passed allowing the claim of the respondent no.5 for pre-emption of the vended lands. The respondent DCLR has committed an error of law in allowing the claim of the pre-emptor, respondent no.5, with respect to the vended lands. The appellate authority as well as the revisional authority have not taken into consideration the cancellation of sale deeds made by virtue of award/order passed on 23.11.2005 by the Permanent Lok Adalat, Madhubani which was prior to the impugned original order passed by the respondent DCLR. Since there was no valid and conclusive transfer of the lands by the petitioners in favour of the respondent no.6, hence there was no question of allowing the claim of pre-emption of the respondent no.5 on any ground and to that extent, statutory authorities have committed error of law. Therefore, the original order, appellate order and the revisional orders contained in Annexures- 1, 2 and 3 respectively cannot be sustained in law.

10. Consequently, the impugned original order dated 20.01.2006 (Annexure-1), appellate order dated 30.11.2006 (Annexure-2) and the revisional order dated 25.05.2007 (Annexure-3) are hereby quashed and set aside and Land Ceiling Case No. 3 of 2005-06 filed by the respondent no.5 is hereby dismissed.

11. In the result, the writ petition stands allowed. The parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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