IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5049 of 1994

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Most. Dalwa Devi widow of Chabila Bhagat, Resident of Village Laxmi Narainpur, P.S. Mahua, District Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Additional Member, Board of Revenue, Patna
3. Collector of the District Vaishali at Hajipur
4. Deputy Land Reforms Collector, Vaishali at Hajipur
5. Sumitra Devi wife of Brahmdeo Bhagat. Resident of Village Laxmi Narainpur, P.S. Mahua, District Vaishali
6. Kaliya Devi wife of Rit Lal Bhagat of Village Laxmi Narainpur, P.S. Mahua, District - Vaishali

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5051 of 1994

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Most. Dalwa Devi widow of Chabila Bhagat, Resident of Village Laxmi Narainpur, P.S. Mahua, District Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Additional Member, Board of Revenue, Patna
3. Collector of the District Vaishali at Hajipur
4. Deputy Land Reforms Collector, Vaishali at Hajipur
5. Shri Rameshwar Bhagat son of Bishuni Bhagat. Resident of Village Laxmi Narainpur, P.S. Mahua, District Vaishali
6. Kaliya Devi wife of Rit Lal Bhagat of Village Laxmi Narainpur, P.S. Mahua, District - Vaishali

.... Respondent/s

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Appearance :
(In CWJC No. 5049 of 1994)
For the Petitioner : Mr. Bhubneshwari Prasad, Advocate
For the State : Mr. Anil Kumar Singh, AC to G.A.-10
For the Respondent no.5: Mr. Chandra Mauli Chaurasia
(In CWJC No. 5051 of 1994)
For the Petitioner : Mr. Bhubneshwari Prasad, Advocate
For the State : Mr. Anil Kumar Singh, AC to G.A.-10
For the Respondent no.5: Mr. Chandra Mauli Chaurasia

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
ORAL JUDGMENT
Date: 30-04-2015

Heard learned counsel for the petitioner, the State and the counsel for private Respondent no.5, the purchaser of the lands in question.

2. Purchaser is the petitioner. She has filed the two writ petitions assailing Resolution of the Board of Revenue, Bihar dated 28.06.1993 passed in Case Nos. 337, 338 of 1991, Annexure-10 whereunder Additional Member, Board of Revenue set aside the order dated 14.08.1991, Annexure-9 passed by the District Collector, Vaishali in Land Ceiling Appeal Case Nos. 179, 180/1983-84 and allowed the claim of the pre-emptor setting aside the order passed by the Collector under the Act i.e. D.C.L.R., Hajipur in Case Nos. 65, 66/1983 rejecting the application for pre-emption on the ground that the application in Form L.C.13 did not contain her signature or thumb impression.

3. It is submitted on behalf of the petitioner that claim for pre-emption under sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is required to be filed within 90 days of the registration of the sale deed in Form L.C.13 issued in terms of Rule 19 of the Bihar Land Ceiling Rules, 1963. It is also submitted that interpreting the provisions under the Act and the Rules Courts have held that any defect found in Form L.C. 13 can always be corrected. Reliance in this connection is placed on the judgment of the Supreme Court in the

case of **Hiralal Agrawal Vrs. Rampadarath Singh and others, 1968 PLJR 68A(SC).** It is further submitted that no sooner pre-emptor realized that her signature is missing from Form L.C. 13 filed in the instant case, she requested the Collector under the Act i.e. DCLR, Vaishali to permit her to remove the defect by putting her signature or LTI over Form L.C. 13 on the basis of which the case was instituted, but DCLR did not consider her such request and rejected the pre-emption application holding that no pre-emption case was filed within 90 days of the registration of the sale deed as Form L.C. 13 filed in the case within 90 days did not contain her signature or LTI.

4. The Appellate Court i.e. Collector, Vaishali entertained the appeal and permitted the pre-emptor to amend the pre-emption application by putting her signature as also by furnishing the classification of the lands transferred required to be furnished in paragraph 2 of Form L.C. 13 and proceeded to consider the claim for pre-emption on merits and held under order dated 14.08.1991, Annexure-9 that after removal of the defects in the pre-emption application Form L.C. 13, may be beyond 90 days of the date of registration of the sale deed, it is evident from the pre-emption application that pre-emptor being co-sharer and boundary raiyat allowed her claim. Against the appellate order vendee filed Revision

Case No. 337, 338 of 1991 before the Board of Revenue. Additional Member, Board of Revenue under Resolution dated 28.06.1993, Annexure-10 considered the case of the parties and held that the District Collector exceeded his jurisdiction by permitting the pre-emptor beyond 90 days of the registration of the impugned sale deed to remove the defect in Form L.C. 13 and put her signature over the same. Having held as above set aside the appellate order, Annexure-9.

5. Learned counsel for the pre-emptor placing reliance on the judgment of the Supreme Court in the case of Harilal Agrawal (supra) submitted that defect in the pre-emption application i.e. Form L.C. 13 though removed beyond 90 days of the registration of the impugned sale deed, removal of the defect permitted beyond the statutory time fixed for filing the application the defect in Form L.C. 13 being subject to removal, this Court should set aside the Resolution dated 28.06.1993, Annexure-10 passed by Additional Member, Board of Revenue and maintain the appellate order as on merits it is undisputed that pre-emptor-petitioner is not only boundary raiyat, but is also a co-sharer of the vendor of the lands in question.

6. From the sketch map of the lands in question as drawn in Annexure-8 at internal page-7 and running page 71 of the brief, which is an application filed by pre-emptor before the DCLR, Vaishali, it is quite evident that pre-emptor is a boundary raiyat of the

vended land and her application was fit to be allowed, provided same would have been filed within 90 days of the registration of the impugned sale deed. In the instant case, petition in Form L.C. 13 enclosing the sale deed and the chalan depositing the amount of consideration money plus 10 per cent was filed within 90 days, but without indicating classification of land and putting signature or LTI of the pre-emptor over the same and that being the admitted position, her application was not maintainable on the date on which it was filed as the same was defective. The application filed without signature or LTI is no application at all. The application for removal of defect seeking permission to put LTI or signature was filed beyond 90 days i.e. after the limitation had already set in and the DCLR having not been vested with the power to condone the delay in filing the pre-emption application, in my opinion, rightly did not allow amendment petition seeking removal of defect. The Appellate Court while considering the appeal which is continuation of the original proceeding allowed the request of the pre-emptor to amend the Form L.C. 13 beyond 90 days for which it was not authorized and as the original authority i.e. Collector under the Act had no jurisdiction to allow the amendment in Form L.C. 13 beyond 90 days, such relief could not have been allowed to the pre-emptor by the appellate authority. The appellate authority by permitting the pre-emptor to put her signature in Form L.C. 13 beyond 90 days has exceeded its jurisdiction.

7. Accordingly, I do not find any merit in the two writ petitions, which are dismissed maintaining the order passed by DCLR and the resolution of the Board of Revenue.

(V.N. Sinha, J.)

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