

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5188 of 1993

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1(a) Maya Devi wife of Late Jagdip Rai
1(b) Braj Nandan Roy, Son of Late Jagdip Rai
2. Most. Mina Devi wife of Satrugan Singh.
3. Mamta Kumari, daughter of Satrugan Singh.
Under the guardianship of Mother Mina Devi All residents of Village-Gopalpur
Chaknai, P.S. Bidupur, District- Vaishali.....Purchasers.....
.... Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Collector, Vaishali.
4. The Deputy Collector land Reforms, Hajipur, Vaishali.
5. Nokha Singh son of Mohit Singh.
6. Ram Vilash Singh son of Jalim Singh.
Respondent Nos. 5 and 6 are residents of Village Gopalpur Chaknai, P.S.
Bidupur, district- Vaishali.....Pre-emptors.....Respondents Ist Set.
7. Zamindar Singh son of Ramanand Singh.
8. Most. Lalmuni Devi wife of Nawal Singh.
Respondent Nos. 7 and 8 are residents of Village-Gobindpur Goahala, P.S.
Bidupur, District- Vaishali.....Vendors.....Respondents 2nd Set.
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhunath Roy, Sr. Advocate
Mr. Mritunjay Pd. Singh, Adv. AOR-514
For the Respondent/s : Mr. (SC7)
Mr. Anil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 14-07-2015

This is an application seeking quashing of the order dated
04.07.1984 passed by the Deputy Collector, Land Reforms, Hajipur in
Land Ceiling Case No. 38 of 1982-83 whereby he allowed an
application under Section 16 (3) of the Bihar Land Reforms (Fixation
of Ceiling Area and Acquisition of Surplus Land) Act, 1961

(hereinafter referred to as the Act) preferred by respondent nos. 5 and 6.

2. The orders passed by the Collector, Vaishali in Ceiling Appeal No. 56 of 1984-85 and the order dated 30.01.1993 passed by the Additional Member, Board of Revenue, Bihar, Patna in Ceiling Revision Case No. 278 of 1991, whereby the order passed by the Deputy Collector, Land Reforms, Hajipur allowing pre-emption application, has been affirmed, are also under challenge in this application.

3. The Petitioners are purchasers whereas Respondents No. 5 and 6 are the pre-emptors.

4. Pursuant to the notice issued to the private respondents including respondent nos. 5 and 6, the contesting respondents, they entered appearance. Respondent nos. 5 and 6 have filed their counter affidavit, which is there on record. However, there has been no representation on their behalf in course of hearing of this case.

5. The vended land has been described as Plot No. 181 of Khata No. 142 of village- Gopalpur Chaknai admeasuring 2 Kathas, 15 Dhurs and 9 Kanma. Through four separate sale deeds bearing numbers 2486, 2487, 2488 and 2489 executed on 08.04.1982 and registered on 26.07.1982, the petitioners purchased the said land from

the vendors Zamindar Singh and Most. Lalmuni Devi (Respondent Nos. 7 and 8).

6. This is not in dispute that Respondent No. 6, Ram Vilash Singh has been described to be boundary raiyat of the land purchased through the said sale deed no. 2489 dated 08.04.1982.

7. The said Ram Vilash Singh and Nokha Singh (Respondent Nos. 5 and 6) filed an application before the Deputy Collector, Land Reforms, Hajipur under Section 16 (3) of the Act, claiming their preferential right on the ground that Ram Vilash Singh was the adjoining raiyat on the northern side of the land, purchased by the petitioners through the four sale deeds, whereas Nokha Singh was adjoining raiyat on the southern side of the land.

8. The Deputy Collector, Land Reforms, Hajipur allowed the said application under Section 16 (3) of the Act by impugned order dated 04.07.1983. An appeal was preferred before the Collector against the order of the Deputy Collector, which came to be dismissed by an order dated 18.07.1991. The revision petition preferred against the order passed by the Collector was dismissed by an order dated 30.01.1993. This is the circumstance, in which, the petitioners have challenged the order dated 04.07.1983 passed by the Deputy Collector, Land Reforms, Hajipur; order dated 18.07.1991 passed by

the Collector, Vaishali and the order dated 30.01.1993 passed by the Additional Member, Board of Revenue, Bihar, Patna in the present writ application.

9. Learned Senior Counsel appearing on behalf of the petitioners, assailing the impugned orders has contended that the authorities under the Act failed to appreciate the settled legal proposition that the petitioners themselves became adjoining raiyats, having purchased adjacent plots through four separate sale deeds. He has contended that only one application for pre-emption under Section 16 (3) of the Act was filed jointly by Ram Vilash Singh and Nokha Singh claiming preferential rights with respect to the pieces of lands, purchased through four sale deeds. According to him, if the contesting respondents claimed to be adjoining raiyat of all the lands purchased by the petitioners through four sale deeds, they were required to file four separate applications under Section 16 (3) of the Act, which they did not do. He has further submitted that though the name of Ram Vilash Singh was recorded in the Sale deed No. 2489 as boundary raiyat towards the northern side, name of Nokha Singh did not figure in the said sale deed as boundary raiyat and Nokha Singh could not establish before the authorities that he was adjoining raiyat of any of the lands, purchased by the petitioners through said sale



deeds dated 08.04.1982. He has also contended that in order to claim right of pre-emption under Section 16 (3) of the Act, only Nokha Singh had deposited the requisite amount of Rs. 20,000 (purchase price of the lands) plus 10 per cent and in such circumstances, joint application filed by Ram Vilash Singh and Nokha Singh could not have been entertained. It is his further case that the amount was deposited by Nokha Singh on 04.08.1982 and the pre-emption application was filed on 05.10.1982. In the meanwhile, i.e. after registration of the sale deeds on 26.07.1982, the land which the petitioners had purchased through sale deed no. 2489, was sold to one Satrugan Singh. The land having been sold by the petitioners to Satrugan Singh, prior to 04.08.1982, said Ram Vilash Singh lost any right to claim pre-emption, under the said provisions of Section 16(3) of the Act as he was described as boundary raiyat in the sale deed no. 2489. He has submitted that admittedly, Ram Vilash Singh did not deposit the statutory amount as required under Section 16(3) of the Act and, therefore, his claim for right of pre-emption could not have been maintained.

10. In support of his submission that by purchasing the lands in question through separate sale deeds, the petitioners themselves acquired the status of adjoining raiyat and, therefore, the

claim of pre-emption raised by the contesting respondent nos. 5 and 6 could not have been entertained, he has placed reliance upon the following Division Bench decisions of this Court:

1. **1987 PLJR 455 (Ram Roop Yadav Vs. The State of Bihar and others); and**
2. **2004(2) PLJR 335 (Nathuni Mahto Vs. State of Bihar and ors.)**

11. Since I find substance in submission made by learned Senior Counsel appearing on behalf of the petitioners that they having purchased the lands through four separate sale deeds, they themselves acquired the status of an adjoining raiyat, I need not go into other submissions advanced by him in order to assail the orders, which are impugned in the present writ application.

12. In case of **Ram Roop Yadav Vs. The State of Bihar and others** (Supra) a Division Bench of this Court held in paragraph 6 as follows:-

“ In view of the series of judgments of this Court, it is almost settled that before an application under section 16 (3) of the Act is filed, the purchaser by purchasing an adjoining plot can himself become the holder of an adjoining plot in order to defeat the pre-emption application which is filed later. Of course different considerations will arise where purchaser tries to become a holder of an adjoining plot by making



*purchase of the adjoining land after filing of the application under section 16 (3) of the Act. In the instant case, the petitioner has not purchased the adjoining plot on different dates but on the same day and the registration in respect of the two deeds had also been completed much before filing of the two applications under section 16 (3) of the Act. As such there should not be any difficulty in holding that when the pre-emption applications were filed by two different sets of pre-emptors for reconveyance of the two plots in two cases, on that day, the petitioner himself had become the holder of adjoining plots in both the cases and he could have resisted the claim for reconveyance of either of the plots. In my view, the Land Reforms Deputy Collector rightly dismissed the application. The Additional Collector and the Member, Board of Revenue, have wrongly placed reliance on the Full Bench case of **Sheo Kumar Dubey v. Sudama Devi** (AIR 1962 Patna 124). In the aforesaid case, it had been observed “it is thus evident that the entire land is clogged with an encumbrance in the shape of the right of pre-emption. It is not a personal right; the vendor possesses the property not absolutely, but subject to the right of pre-emption.” In the case of **R.C. Srivastava v. P.N. Singh** (Supra), the Full Bench explained the view expressed in the case of **Sheo Kumar Dubey v. Sudama Devi** (Supra) and observed as follows:-*

*“In **Sheo Kumar Dubey’s** case, Kanahiya*



Singh, J, had no occasion to consider the question as to how the right of pre-emption accrues or the question as to how such a right can be or is lost. His Lordship was merely describing the legal incidents of a perfected right of pre-emption. He was not dealing with a situation arising out of some events which may have the effect of nullifying that right before any step is taken to enforce it.”

The learned Additional Collector should have followed the views expressed in the later Full Bench judgment in connection with an application under section 16 (3) of the Act, instead of a view expressed in the earlier Full Bench case in connection with customary right of pre-emption.”

13. The view taken by the Division Bench in case of ***Ram Roop Yadav Vs. The State of Bihar and others*** has been followed by subsequent decisions in case of ***Nathuni Mahto Vs. State of Bihar and ors. (Supra)***.

14. In view of the law laid down by this Court in the decisions as noted above, I am of the view that the vendees became adjoining raiyats by other sale deeds and the claim of Respondent Nos. 5 and 6 under Section 16(3) of the Act could not be maintained by the authorities under the Ceiling Act. In such view of the matter, I



am of the opinion that orders passed by the Deputy Collector, Land Reforms, Hajipur dated 04.07.1984 in Land Ceiling Case No. 38 of 1982-83, order dated 18.07.1991 passed by the Collector, Vaishali in Ceiling Appeal No. 56 of 1984-85 and order dated 30.01.1993 passed by Additional Member, Board of Revenue, Bihar, Patna in Civil Revision Case No. 78 of 1991 need to be interfered with by this Court. The orders are accordingly quashed.

- 15. This Application is allowed.
- 16. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

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