

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2747 of 1995

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GORAKH SAH, SON OF LATE SHEOPUJAN SAH, RESIDENT OF VILLAGE
POST OFFICE AND POLICE STATION BHOOREY, DISTRICT GOPALGANJ

.... Petitioner

Versus

1. THE ADDL. MEMBER, BOARD OF REVENUE, BIHAR, PATNA
2. THE ADDL.COLLECTOR, GOPALGANJ
3. THE SUB DIVISIONAL OFFICER, HATHUA, DISTRICT GOPALGANJ
4. RAMESH PRASAD, SON OF THAKUR SAH
5. SHAMBHU PRASAD SONAR, SON OF BHAGWAN SAH
6. ANIL KUMAR VERMA, SON OF GORAKH SAH, NO.4 TO 6 ARE RESIDENT OF
VILLAGE POST OFFICE AND POLICE STATION BHOOREY, DISTRICT
GOPALGANJ.

.... Respondents

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Appearance :

For the Petitioner : Mr. Y.V.Giri, Senior advocate and
Mr. V.Ratan Bharti, Advocate

For the Respondents : Mr. Sanjay Kumar, AC to GA 12.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

6 16-04-2015 The petitioner lost his preemption case before all the 3

authorities, namely, the SDO, the Additional Collector and the

Additional Member, Board of Revenue. At the relevant time,

the SDO was authorized with necessary power to deal with the

cases of preemption. All the three authorities held that the land

was homestead land and not agricultural land and as such

preemption application was not maintainable.

The petitioner submits that some of the documentary

materials produced by him was not considered by the

respondents, and thus seeks one last indulgence to satisfy the

authorities that at the relevant time the land was not homestead

land but an agricultural land.

Counsel for the State submits that mere recital of the

agricultural land would not only make it agricultural if it is not so.

There cannot be any dispute to the view point put forth by learned counsel for the State. At times, with an intention to pay lesser court fee and stamp duty, correct status of land is not mentioned by the parties, in their sale deed. For example, at times the Dhanhar land is shown as Class II or III land. In the case in hand, the authorities on the basis of Pleader Commissioner's report, opined that the land was not agricultural but homestead land. In such cases, one of the appropriate courses would be to saddle both the vendor and vendee with appropriate cost, so that the revenue of State may not suffer.

However, in the facts and circumstances of the case, I deem it appropriate to give a last opportunity to the petitioner to establish his case that the land was agricultural land. The matter is remitted to the appropriate authority for fresh consideration within six weeks from the date of receipt of this order, without prejudice.

Till then the order passed by respondent no.1 would remain in abeyance.

The writ petition is thus disposed of.

Shashi.

(Samarendra Pratap Singh, J)

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