

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3729 of 1999

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1. Roshan Prasad Mandal @ ShashiBhushan Mandal,
2. Indu Bhushan Mandal
3. Rajeev Bhushan Mandal
4. Sanjay Bhushan Mandal
All Sons of Late Lakhan Lal Mandal, residents of
Village: Bharko, P.S.: Amarpur, District: Banka.

..... Petitioners
Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Additional Collector, Banka.
4. The Additional Collector, Bhagalpur.
5. The Sub-Divisional Magistrate, Banka.

..... Respondent 1st Set.

6. Dip Narayan Mahton S/o Late Ramadhari Mahton
7. Sanyogita Devi W/o Late Nageshwar Mahton
8. Siyaram Prasad S/o Late Jagdish Mahton
9. Mukesh Kumar
10. Rakesh Kumar
11. Amit Kumar, all sl. No. 9 to 11 Sons of Late
Bishnudeo Prasad
12. Mohan Mahton S/o Late Kafru Mahton
13. Parmanand Mahton
14. Vikash Mahton
15. Sikandara Prasad Mahton
16. Deepak Mahton
17. Neeraj Mahton, all sl. no. 13 to 17 Sons of Late
Hiridaya Mahton.
18. Kailash Mahton
19. Sushil Mahton, both 18 & 19 Sons of Nand Kishore
Mahton
20. Yugal Mahton, Son of Late Nafru Mahton
All sl. no. 6 to 20 residents of Village: Bharko,
P.S. Amarpur, District Banka (Pre-emptor)

..... Respondents 2nd Set.

21. Sk. Sraffat S/o Late Sk. Rashid
22. Sk. Maqbool
23. Sk. Mohabbat, both 22 & 23 Sons of Late Sk. Kapoor
24. Sk. Mianjar S/o Late Sk. Anpi.
All sl. no. 21 to 24 residents of Village: Bharko,
P.S. Amarpur, District : Banka (Vendors).

..... Respondents 3rd Set.
with

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Civil Writ Jurisdiction Case No. 3730 of 1999

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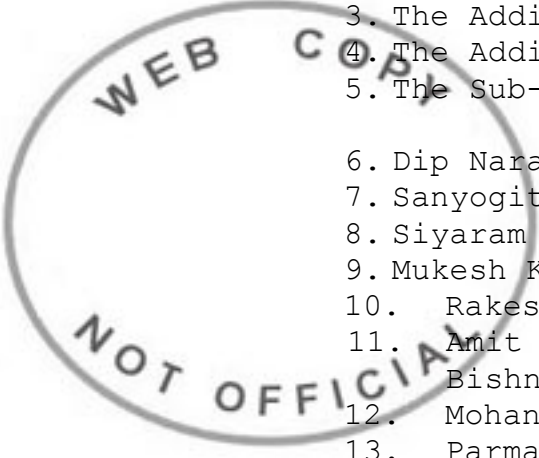
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..... Respondents 3rd Set.
..... Respondent/s
with

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Civil Writ Jurisdiction Case No. 3911 of 1999
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1. Roshan Prasad Mandal @ Shashi Bhushan Mandal,
2. Indu Bhushan Mandal
3. Rajeev Bhushan Mandal
4. Sanjay Bhushan Mandal
All Sons of Late Lakhan Lal Mandal, residents of
Village: Bharko, P.S.: Amarpur, District: Banka.
..... Petitioners

Versus

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1. The State of Bihar
 2. The Additional Member Board of Revenue, Bihar, Patna.
 3. The Additional Collector, Banka.
 4. The Additional Collector, Bhagalpur.
 5. The Sub-Divisional Magistrate, Banka.
 - Respondent 1st Set.
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 7. Sanyogita Devi W/o Late Nageshwar Mahton
 8. Siyaram Prasad S/o Late Jagdish Mahton
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All sl. no. 6 to 20 residents of Village: Bharko,
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 - Respondents 2nd Set.
 21. Sk. Sraffat S/o Late Sk. Rashid
 22. Sk. Maqbool
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All sl. no. 21 to 24 residents of Village: Bharko,
P.S. Amarpur, District : Banka (Vendors).
 - Respondents 3rd Set.
- =====

Appearance :

(In CWJC No. 3729 of 1999)

For the Petitioners :Mr. Hemendra Prasad Singh, Sr.Adv.
Mr. Arbind Kumar, Adv.

For the Respondents :Mr. Umesh Prasad Singh, Sr.Adv.
Mr. Raghwendra Kumar Singh, Adv.

(In CWJC No. 3730 of 1999)

For the Petitioners :Mr. Hemendra Prasad Singh, Sr.Adv.
Mr. Arbind Kumar

For the Respondents :Mr. Umesh Prasad Singh, Sr.Adv.
Mr. Raghwendra Kumar Singh, Adv.

(In CWJC No. 3911 of 1999)

For the Petitioners :Mr. Hemendra Prasad Singh, Sr.Adv.
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For the Respondents :Mr. Umesh Prasad Singh, Sr.Adv.

Mr. Raghwendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
CAV JUDGMENT

Date: 22-07-2015

In all the aforesaid three writ petitions, common orders, passed by the Member, Board of Revenue i.e. revisional court and Additional Collector i.e. appellate court, are under-challenge and as such, with the consent of the parties, all the aforesaid three writ petitions were heard together and are being disposed of by this common order.

2. Petitioners purchased land appertaining to Khata No. 71 Plot No. 1196 and Plot No. 1197 measuring an area of 19 decimals and land appertaining to Khata No. 219 Plot No. 1198 measuring an area of 4 ½ decimals, Mauza Bharko through three registered sale-deeds. After the deed was registered, the respondents 2nd set claiming right of pre-emption preferred three applications, vide Case No. 3/1970-71, 5/1970-71 & 6/1970-71 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') in the court of Sub-Divisional

Officer, Banka (hereinafter referred to as the 'S.D.O.').

3. The pre-emption application was filed in compliance with the provision of the Act and as such, notices were issued. In the said pre-emption case, petitioners raised an objection that the purchased land was not agriculture land since on the purchased land, there were houses. A plea was taken that land was purchased for residential purpose not for agriculture purpose. Before the S.D.O., from the side of petitioners, jamabandi khatian was produced to show that the nature of land was residential. The learned Sub-Divisional Officer by its order dated 11-06-1984 rejected all the three pre-emption applications by a common order.

4. The pre-emptor (respondents 2nd set) preferred three appeals before the Additional Collector, Banka against the order of Sub-Divisional Officer, vide Miscellaneous Appeal No. 29 of 1984-85, 30 of 1984-85 and 31 of 1984-85. All the three appeals were heard together and the learned Additional Collector, Banka by its order dated 02-08-1984 rejected all the three

appeals and affirmed the order passed by the S.D.O.

5. Thereafter, the pre-emptor (respondents 2nd set) preferred revision applications before the learned Member, Board of Revenue, Bihar, Patna and the learned Additional Member, Board of Revenue too rejected the revisions by its order dated 15-12-1984. Order of the Additional Member, Board of Revenue dated 15-12-1984 is required to be quoted here-in-below:-

"Heard. Perused and examined the Memo of Revision petition along with the copy of orders of Lower Court dated 2.8.84.

There is no merit in the petition. The prayer for admission is rejected. This applied to Case Nos. 405 and 406 of 1984 as these cases were disposed of by a common order as analogous."

6. The pre-emptor (respondents 2nd set) dissatisfied with the order of the revisional court approached this Court by filing three writ petitions, vide C.W.J.C. No. 948 of 1985, 953 of 1985 and 954 of 1985. This Court considering the fact that the appellate court as well as revisional court had rejected the appeals and revisions respectively in a cryptic manner, by

judgment dated 5th April, 1996 allowed the writ petitions and remitted back the matter to the appellate authority with a direction to pass order afresh after hearing the parties and considering the Lower Court Records.

7. Thereafter, the matter was heard by the Additional Collector, Banka. It appears that the date on which the record on remand was received, earlier sub-division Banka had already come into existence as a district. The learned Additional Collector on remand summoned the record and after hearing the parties, this time allowed the appeals in favour of pre-emptors, vide Appeal Case No. 29 of 1984-85, 30 of 1984-85 and 31 of 1984-85 only on the ground that in the sale-deeds nature of land was described as agriculture land.

8. Against the order of the appellate court, the petitioners filed three revisions, vide Revision Case No. 83 of 1998, 84 of 1998 and 85 of 1998 and the Additional Member, Board of Revenue finally by order dated 10-03-1999 dismissed all the three revisions and affirmed the order of the Additional Collector.

9. The petitioners aggrieved with order

of the Additional Collector, which was passed on remand and order of the Additional Member, Board of Revenue, approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India.

10. Before proceeding, it would be appropriate to indicate that C.W.J.C. No. 3729 of 1999 is in relation to Case No. 3 of 1970-71, C.W.J.C. No. 3730 of 1999 is in relation to Case No. 5 of 1970-71 and C.W.J.C. No. 3911 of 1999 is in relation to Case No. 6 of 1970-71.

11. According to the writ petitions, it is the case of the petitioners that land in dispute was purchased by petitioners from the ancestors of respondents 3rd set on 09-03-1970 on a consideration amount of **Rs. 8,540/-** for construction of houses as land in question was homestead land, over which, the houses of the vendors were already constructed, not in good condition, at the time of purchase. After purchasing the land, they made pucca construction over the same and they are residing their with their family.

12. It is further stand of the

petitioners that there was a revisional survey. The survey authority had found the houses of the petitioners over the disputed land.

13. The petitioners further pleaded that on purchase of land through three sale-deeds, they had become adjoining rayats. After the land in question were purchased by the petitioners through registered sale-deeds, the respondents 2nd set claiming right of pre-emption filed petitions under Section 16 (3) of the Act.

14. The case of respondents 2nd set is that land in question was earlier recorded in the name of one Chethru Nadaf. After the death of their father, they become raiyat of purchased lands. The ancestor of respondents 2nd set purchased some of the land of aforesaid khata and plot through registered sale-deeds in the year 1943 and since then they came into possession and after the death of their father, they become raiyat of the purchased land. It was claimed that since the respondents 2nd set were adjoining raiyat of land in question, they were having right of pre-emption over the land in question.

15. Sri Hemendra Prasad Singh, learned



senior counsel, who was assisted by Sri Arvind Kumar, learned counsel for petitioners emphatically argued that on the basis of record, which were produced before the S.D.O. in aforesaid pre-emption cases, it was established that the transferred land was not agriculture land, rather it was a residential land and as such, the learned S.D.O. on the basis of record, had rightly rejected the claim of pre-emption and all the three pre-emption petitions were rejected.

16. In all appeals preferred by respondents 2nd set before the appellate authority i.e. Additional Collector, the appellate authority at the first instance, concurring with the finding of the learned S.D.O. that land in question was being used for dwelling house with courtyard, rejected the appeals preferred by the respondents 2nd set. The revisional court i.e. Additional Member, Board of Revenue too rejected all the three revision petitions, which were filed by the respondents 2nd set, however; the revisional court had not assigned detail reason for rejecting the petitions and as such, a Bench of this Court in the writ petitions i.e. C.W.J.C. No. 948 of 1985,

953 of 1985 and 954 of 1985 by its judgment dated 5th April, 1996 set aside the order of the appellate authority as well as the revisional authority.

17. He submits that the order of the revisional court was primarily interfered with on the ground that it was non-speaking and cryptic. However, since the matter was remitted back to the appellate authority for passing an order afresh, after hearing the parties on the basis of materials on record, learned Additional Collector on remand was required to examine the record in its right perspective.

18. He submits that once the Additional Collector who had earlier rejected the appeal holding that the land in question was not agriculture on the basis of record, the learned Additional Collector at subsequent stage i.e. on remand was not at all entitled to record a different finding. Similarly, he has assailed the order of the revisional court.

19. In sum and substance, it has been argued that the nature of land from the cadestral survey report had already changed and in the

record, created in a proceeding, it was categorically held that the land in question was not agriculture land, rather there were dwelling houses with courtyard and as such, there was no application of Section 16(3) of the Act in the land in question.

20. He has further argued that the land in question was purchased by petitioners in the year 1970 itself and at the time of purchase, over the land in question, there was house in a dilapidated condition. Immediately after purchasing the land, the petitioners constructed their houses and they are residing in their houses with their family since long and as such, he submits that order of the appellate court, which was passed on remand as well as order of the revisional court are fit to be set aside.

21. Sri Umesh Prasad Singh, learned senior counsel, who was assisted by Sri Raghwendra Kumar Singh, learned counsel for the respondents 2nd set (pre-emptors) has vehemently opposed the prayer of the petitioners. He has emphasized that in the sale-deed itself, there was assertion that land in question was agricultural land.

22. He submits that once in the sale-deed itself, there was recital regarding the nature of land, the submission made by learned senior counsel for the petitioners that it was dwelling house with courtyard is fit to be rejected.

23. He has further tried to persuade the Court that in view of judgment of the Full Bench of this Court reported in **AIR 1975 PATNA 119 (F.B.) (Fakir Mohammad -vs.- Salahuddin and others)**, the orders passed by the appellate court as well as the revisional court are not required to be interfered with.

24. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Before proceeding, it would be appropriate to observe that the first court i.e. Sub-Divisional Officer's court, where pre-emption cases were filed, vide case nos. 3 of 1970-71, 5 of 1970-71 and 6 of 1970-71, the learned S.D.O. had categorically noticed that even over the land of pre-emptors, there was a dwelling house.

25. It was noticed that from plot no. 1196, the father of the respondents 2nd set (pre-

emptors) had purchased some of the land measuring 0.19 decimals. In the chakbandi khatiyān of the said land, it was mentioned that "मकान मय सहन" i.e. dwelling house with courtyard.

26. The learned S.D.O. had also noticed that in the area of other plots also, there were houses. In respect of land in question i.e. plot no. 1196, 1197 and 1198, the learned S.D.O. had noticed that in the certified copy of the chakbandi khatiyān in the column of nature of land, it was mentioned as "मकान मय सहन" (Dwelling House with courtyard). Once the first court i.e. the Sub-Divisional Officer had noticed the aforesaid fact that nature of land was "मकान मय सहन" (Dwelling House with courtyard), the appellate authority on remand has committed serious error in deciding the appeals in favour of the respondents 2nd set (pre-emptors) only on the ground that in the sale-deeds, nature of land was mentioned as agriculture land. Whereas, the purchaser had taken a specific stand that due to mistake of deed-writer, such error had occurred in the sale-deed and instead of mentioning the nature of land as "Dwelling House with courtyard", it was

incorrectly mentioned as "Agriculture Land".

27. The order of the Sub-Divisional Officer, passed long back on 11-06-1984, was very specific on this issue, which was based on documents brought on record.

28. In this case, land was purchased in the year 1970 itself. Right from very beginning, it is the stand of the petitioners-purchasers that after the purchase of the land in question, they have constructed their houses and they are living with their family over the land in question.

29. In view of the definite finding recorded by the Sub-Divisional Officer in respect of nature of land, which is obviously not agriculture land, the Court is of the opinion that on remand the appellate authority has committed serious error in deciding the appeal in favour of the respondents 2nd set (pre-emptors) only on the ground that in the sale-deeds, nature of land was mentioned as agriculture land. Similar mistake has been committed by the revisional court.

30. Besides aforesaid fact it is also necessary to be recorded that after the order of revisional court, the petitioner approached this



Court by filing aforesaid writ petitions and a bench of this Court by its order dated 2.2.2000 directed for maintaining status quo. Subsequently the writ petitions were admitted for hearing by order dated 8.5.2000. While admitting the writ petitions it was directed that interim order dated 2.2.2000 shall continue till disposal of this case. It is not the case of respondent 2nd set (pre-emptor) that possession of land in question has been delivered to them. Meaning thereby that after the purchase of land since the year 1970 the purchasers are in possession over the land in question. It is also case of the purchasers/petitioners that after purchase they constructed their houses over the land in question and they are residing in their houses with their family. Accordingly, after about 35 years (Thirty Five Years) it would not be just and proper to pass an order for reconveying the land to the pre-emptors.

31. So far as case of **Fakir Mohammad (supra)** is concerned, the said case was decided on the basis of facts and circumstances, which is not similar to the present case. In the said case,

the vender after executing sale-deed had cancelled the sale-deed. Therefore, in view of the facts and circumstances of the present case, the respondent 2nd set (pre-emptor) may not get any benefit from the **Fakir Mohammad's case (supra)**.

32. In view of the aforesaid facts and circumstances, both the orders i.e. order dated 03-04-1998 passed in Appeal Case Nos. 29 of 1984-85, 30 of 1984-85 and 31 of 1984-85 and order dated 10-03-1999 passed in Revision Case Nos. 83 of 1998, 84 of 1998 and 85 of 1998 are, hereby, set aside.

33. All the aforesaid three writ petitions are allowed.

(Rakesh Kumar, J.)

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