

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2225 of 1999

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Gyani Chowdhary, s/o Kail Chowdhary, resident of village Pathrora, P.S. magadh Medical, P.O. Pandey parswan, District Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri P. Lal, I.A.S., Additional Member Board of Revenue, Bihar, Patna
3. Collector of the District Gaya
4. land Reform Deputy Collector, Sadar, Gaya (Collector Under the Act)
5. Jagdeo Mistry, s/o Kuldeep Mistry, resident of village Pathrora, P.O. Pandey Parsawan, P.S. medical College, Gaya, district Gaya
6. Narayan Prasad Sonar, S/o Late Dwarika Sao, Sonar, Resident of village Gewalbigha, P.S. Civil Lines, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : AC to GP 2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-04-2015

None appeared either on behalf of the petitioner or on behalf of the private respondents. Learned AC to GP No. 2 is present.

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 27.5.1997 passed by the respondent no. 2/ Additional Member, Board of Revenue, Bihar, Patna in Revenue Case No. 111 of 1996. By the said order the learned Additional Member, Board of Revenue has allowed the case filed by the respondent no. 5.

It is case of the petitioner that he had purchased 0.35 decimal of land situated at village Pathrora, P.S. Magadh Medical College from the respondent no. 6. The detail of the land is given

hereinbelow:-

Khata No.	Plot No.	Area/ A-Dec.	Boundary
48(old)/8(new)	138(old)/298, 299 (New)	0.09	North- Jhapsi Mistry South-Jagdeo Mistry East-Ramnandan Singh West – Karha
48(old)/ 8(New)	84(old)/210, 211 (New)	0.04	North- Jhapsi Mistry South–Ahra East – Jhapsi Mistry West- Jagdeo Mistry
Do	346(old)/496(New)	0.06	North-Jagdeo Mistry South-Jagdeo Mistry East – Nij Kharidar West –Ramsevak Yadav
46(old)/ 76(New)	86 (old)/215 (New)	0-16	North-Ramsevak Yadav South- Nij Kharidar East – Nasudev Mistry West - Nij Kharidar

00-35 Decimal

After the sale deed was registered, the respondent no. 5 filed a petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 claiming right of pre-emption on the ground that he was adjoining raiyat. Of-course, a claim was made that the pre-emptor had deposited the consideration money along with additional 10% of the amount. However, it was noticed that same was not deposited correctly. There were errors in the form for depositing of money. Before the Deputy Collector Land Reforms in Ceiling Case No. 21 of 1995-96 the petitioner appeared and raised objection mainly on the ground that the pre-emption petition was required to be rejected on



the ground of non-deposit of the amount as prescribed under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 read with Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 and secondly a plea was taken that the purchaser was also adjoining raiyat. Learned D.C.L.R. after hearing the parties rejected the pre-emption case noticing that deposit was not made by the pre-emptor in proper proforma and also it was noticed that the purchaser was also adjoining raiyat. Against the order of the D.C.L.R. the respondent no. 5 preferred an appeal before the Collector vide Ceiling Case No. 15 of 1995-96. The learned Collector also noticing no error in the order of the D.C.L.R. rejected the appeal preferred by respondent no. 5. Thereafter, the pre-emptor /respondent no. 5 approached the Additional Member, Board of Revenue by filing Case No. 111 of 1996 which was allowed by Sri Pancham Lal, the Additional Member, Board of Revenue by its order dated 27.5.1997 which has been assailed in the present writ petition.

The writ petition was admitted on 27.1.2000 and notice was directed to be issued to the respondent no. 5 and 6. While admitting, a bench of this court directed for staying the impugned order i.e. Annexure – 5 (order dated 27.5.1997) passed by the Additional Member, Board of Revenue. Despite the fact that



respondent no. 5 /the pre-emptor appeared through his counsel, at the time of hearing none appeared on his behalf nor any counter affidavit has been filed. I have perused the materials available on record. On going through the record it is evident that on fact there was concurrent finding of two courts below in favour of the purchaser. It is further evident that deposit was not made by the pre-emptor in accordance with law and as such on this score alone the petition filed under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was required to be rejected. However, the learned D.C.L.R. while examining the matter also noticed that purchaser was one of the adjoining raiyat. The said order was confirmed by the Collector in Ceiling Case No. 15 of 1995-96. At this juncture it is required to note that right of pre-emption is a weak right. In this case purchase of land was made by the petitioner in the year 1993 and purchaser succeeded before two courts below. However, the Additional Member, Board of Revenue has allowed the case of the pre-emptor but the order of the Additional Member, Board of Revenue, was already stayed by this court on 27.1.2000. Thereafter, neither any counter affidavit was filed on behalf of the pre-emptor nor any petition was filed for vacating the order of stay.

In view of the fact that there was concurrent finding of two courts as well as the fact that the requisite deposit was itself contrary

to the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the court is of the opinion that the Additional Member, Board of Revenue was not justified in interfering with the matter. Accordingly, the order dated 27.5.1997 passed in Case No. 111 of 1996 by Sri Pancham Lal, Additional Member, Board of Revenue (Annexure – 5) is set aside.

The writ petition stands allowed.

(Rakesh Kumar, J)

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