

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6907 of 2013

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Ram Balak Singh, S/O Late Nathuni Singh, R/O Village- Maheshwara,
P.S.- Naw Kothi, District- Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Deputy Collector, Land Reforms Mazaul, Begusarai
3. Sita Ram Singh, S/O Late Chandradeo Singh, R/O Village- Maheshwara,
P.S.- Naw Kothi, District- Begusarai
4. Baban Singh, S/O Late Kaleshwar Singh, R/O Village- Maheshwara,
P.S.- Naw Kothi, District- Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satyendra Narayan Singh, Adv.
Mr.Ravindra Kumar Roy, Adv.
Mrs. Praveena Kumari, Adv.

For the Respondent nos.1&2 : Mr. Subodh Kumar Mishra, AC to GP-7

For the Respondent no.3 : Mr.Md.Anis Akhtar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 06-11-2015

Heard the parties.

The petitioner is aggrieved by the order dated 12.02.2013 (Annexure-1) passed in Pre-emption Case No.3 of 2012-13 by the respondent D.C.L.R., Manjhaul, whereby, in exercise of his powers under Section 16(3)(ii) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short The Land Ceiling Act), the respondent D.C.L.R., Manjhaul has issued direction for giving possession over the lands under dispute to the pre-emptor-respondent no.3 herein till the final disposal of the aforesaid pre-emption case.

Learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned order, has submitted that the powers under Section 16(3)(ii) of the Land Ceiling Act is not mandatory, rather it is directory in nature in view of the judicial pronouncement made by a Division Bench of this Court in the case of **Shambhu Prasad**

Singh Vs. Gautam Pandey [1986 PLJR 306]. He further submitted that the respondent D.C.L.R., Manjhaul, while passing the impugned order, has not recorded any finding of facts that the pre-emptor was having a prima facie case and the balance of convenience lies in his favour. Therefore, according to him, the order impugned is not sustainable in law. He also submitted that the lands in question are homestead lands; therefore, pre-emption application filed on behalf of the respondent no.3 is not maintainable.

Per contra, the learned counsel appearing on behalf of the respondent no.3 submitted that the respondent D.C.L.R., Manjhaul, while passing the impugned order, has recorded a finding of fact that the pre-emptor is the co-sharer and has a prima facie case in his favour. Therefore, according to him, the order impugned cannot be legally faulted even if the principle laid down by a Division Bench of this Court in the case of **Shambhu Prasad Singh Vs. Gautam Pandey (supra)** is strictly applied.

After having heard the parties, this Court finds that the respondent no.3 filed the aforesaid pre-emption case on 11.12.2012 raising his claim of pre-emption with respect to the vended plots mentioned in the impugned order. Since the date of filing of the aforesaid pre-emption case almost three years have already elapsed, yet the matter has not been finally decided by the respondent D.C.L.R., Majhau.

In view of the nature of the issues involved in the pre-emption proceeding, and the submissions made by the learned counsel appearing on behalf of the parties, this Court is of the opinion that interest of justice shall be sub-served, if the respondent D.C.L.R., Manjhaul is directed to decide the aforesaid pre-emption case within a period of three months from the date of receipt/production of a copy of this order and till that date the

parties are directed to maintain status quo over the lands under dispute. It is ordered accordingly.

In order to expedite the matter, the petitioner as also the respondent no.3 are hereby directed to appear before the respondent D.C.L.R., Majhaul within a period of one month from today with a certified copy of the present order, whereafter the respondent D.C.L.R., Majhaul shall fix a firm date for deciding the aforesaid pre-emption case expeditiously. Neither the petitioner, who is the purchaser, nor the respondent no.3, who is the pre-emptor with respect to the lands in question shall be granted unnecessary adjournment. If need be, the matter shall be taken up on day to day basis and all endeavours shall be made to decide the aforesaid pre-emption case at an early date, but not beyond the period of three months from the date of appearance of the parties, as indicated above.

It is further clarified that, if either of the parties fails to co-operate, then the respondent D.C.L.R., Majhaul shall be at liberty to proceed in the matter for deciding the pre-emption case strictly in accordance with law and, in that case the, the defaulting party shall not be permitted to challenge that order on the ground of violation of rules of natural justice in any future proceeding.

Till the matter is finally disposed of by the respondent D.C.L.R., Majhaul, the parties shall maintain status quo over the lands in question as obtaining today.

The writ petition stands finally disposed of with the observations and directions made above.

Arvind/-

(Birendra Prasad Verma, J)

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