

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7181 of 2014

Ramakant Chaudhary, son of late Nand Prasad Chaudhary, Resident of village - Selar Kala, P.S. - Fulwaria, District - Gopalganj.

.... Petitioner

Versus

1. The State of Bihar
2. The District Collector, Gopalganj
3. Safadar Khan, son of late Jahir Khan, Resident of village - Line Bazar, P.O. Line Bazar, P.S. Mirganj, District - Gopalganj
4. Mosmat Sahibun, widow of late Abdul Khan
5. Gajadhar Yadav, son of late Garju Yadav,

Both residents of village - Selar Kala, P.O. Line Bazar P.S. Fulwaria, District-Gopalganj..... Respondents

Appearance :

For the Petitioner : Mr. N. C. Verma,
Mr. Natraj Verma, Advocates
For the State : Dr. Raj Kumar Singh, A.C. to S.C. 8
For the respondent no.3: Mr. Yogendra Pd. Sinha, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 23-03-2015

I.A. No.2204 of 2015:

The interlocutory application has been filed for amendment of the writ petition as during the pendency of the writ petition the land ceiling appeal no.10 of 2010 has been decided by the

appellate authority not on the merit but in view of the fact that this writ petition is pending.

Accordingly, the I.A. No.2204 of 2015 is allowed.

Let the reliefs mentioned in paragraph nos.3, 4 and 5 form part of the writ petition along with the statement on fact brought on record vide the supplementary affidavit.

I have heard learned counsel for the petitioner, State and respondent no.3.

It is submitted at the Bar that real contestant is between the respondent no.2, who is the pre-emptor, and the petitioner, who has purchased the land from respondent no.5, who had purchased it from respondent no.4. Thus, respondent nos.4 and 5 are only formal parties as, after sale of the land, they would not have any interest left.

Initially, this writ application was filed for quashing the order dated 20.12.2013 passed by respondent no.2 in land ceiling appeal no.10 of 2010 by which the application filed by the petitioner for holding local inspection by any authority or by appointing Advocate Commissioner was rejected. The petitioner had also challenged the order dated 04.09.2010 passed by the Deputy Collector Land Reforms, Hathua under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 allowing the pre-emption in favour of respondent no.3

before the Collector, Gopalganj.

However, during the pendency of the writ application, the appeal itself has been disposed of by order dated 03.02.2015, a certified copy of which has been appended as Annexure 4 to the supplementary affidavit. From bare perusal of the order, it appears that the appeal has not been disposed of on merit rather the same has been disposed of only on the pretext that the writ petition is pending challenging the interim order which has been passed in the appeal.

In my opinion, the order impugned cannot be sustained in law as, in the absence of any stay order having been passed by this Court, the same should not have been disposed of in the aforesaid manner without recording any finding on merit of the issues involved. Accordingly, the order dated 03.02.2015 passed by the Collector, Gopalganj, as contained in Annexure 4, is quashed and set aside. Let him decide the appeal on its own merit and in accordance with law after granting reasonable opportunity to all the parties concerned.

So far the issue of local inspection is concerned that could have been made during the original proceeding which has culminated in passing of the order by the D.C.L.R. Hathua. Fresh local inspection at the time of appeal is never required as it cannot reveal the situation which was existing there at the time when pre-emption

application was filed. If the petitioner is dissatisfied with the local inspection done or the order having been passed or in the manner in which the proceeding has been conducted, he would be at liberty to raise all the issues before the appellate authority who would pass final order after consideration of the grounds raised by the appellant and after granting reasonable opportunity to the respondents also. It is expected that the concerned appeal would be disposed of within a period of eight weeks from the date of receipt/production of a copy of this order.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

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