IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10392 of 2005

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Ramu Bhagat son of Late Basudeo Bhagat, resident of village Manker, Police Station Kumar Khand, District Madhepura

.... Petitioner/s

Versus

1. The State of Bihar
2. The Member, Board of Revenue, Bihar, Patna
3. The Collector, Madhepura
4. The Deputy Collector, Land Reforms, Madhepura
5. Brahmdeo Sah son of Shibu Sah, resident of Village Bishunpur, Sundar Bazar, Police Station Kumar Khand, Distrtict Madhepura (**expunged vide order dated 16.05.2011 and substituted by his following heirs and legal representatives)**
   (i) Gulab Devi wife of Late Brahmdeo Sah
   (ii) Radha Shyam Swarnkar son of Late Brahmadeo Sah
   (iii) Parshuram Swarnkar son of Late Brahmdeo Sah
   (iv) Siya Ram Swarnkar son of Late Brahmdeo Sah
   All are residents of Village Bishunpur Sundar Bazar, Police Station Kumarkhand, district Madhepura
6. Satya Narayan Sah son of Dasrath Sah, resident of village Bishunpur Sundar Bazar, Police Station Kumar Khand, District Madhepura
7. Kamli Devi wife of Rikhi Chandra Bhagat, resident of village Bishunpur Sundar Bazar, Police Station Kumar Khand, District Madhepura

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10278 of 2011

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1. Gulab Devi wife of Late Brahmdeo Sah
2. Radha Shyam Swarnakar son of Late Brahmadeo Sah ((**expunged vide order dated 26.08.2015 and substituted by his following heirs and legal representatives)**
   (i) Vina Devie (wife)
   (ii) Putushottam Swarnkar (son)
   (iii) Chandan Swarnkar (son)
   (iv) Suman Kumari (daughter)
   (v) Sonam Kumari (daughter)
3. Parshuram Swarnakar son of Late Brahmdeo Sah
4. Siya Ram Swarnakar son of Late Brahmdeo Sah
   all are residents of Village Bishunpur Sundar Bazar, Police Station Kumarkhand, district Madhepura ... . Petitioner/s

Versus

1. The State of Bihar
2. The Member, Board of Revenue, Bihar, Patna
3. The Collector, Madhepura
4. The Deputy Collector, Land Reforms, Madhepura
5. Satya Narayan Sah son of Dasarath Sah, resident of village Bishunpur, Sundar Bazar, Police Station Kumar Khand, District Madhepura
6. Kamal Devi wife of Rikhi Chandra Bhagat, resident of village Bishunpur Sundar Bazar, Police Station Kumar Khand, District Madhepura
7. Ramu Bhagat son of Late Basudeo Bhagat, resident of village Kanker,

Police Station Kumar Khand, District Madhepura

.... Respondent/s

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Appearance :
(In CWJC No. 10392 of 2005)

For the Petitioner/s : Mr.K.N.Chaubey, Sr.Advocate
Mr. Uday Chand Prasad, Advocate
Mr. Manoj Kumar

For the Respondent Nos. 1 to 4 : Mr. Kamlesh Kishore, AC to GP 2

For the Respondent Nos. 5 : Mr. Dhirendra Kumar Jha, Advocate
Mr.Krishna Chand Jha, Advocate

(In CWJC No. 10278 of 2011)

For the Petitioner/s : Mr. Dhirendra Kumar Jha, Advocate
Mr.Krishna Chand Jha, Advocate

For the Respondent Nos.1 to 4 : Mr.Ajay Kumar Sharma, AC to PAAG

For the Respondent Nos. 5 to 7 : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 03-09-2015

The issues involved in both the writ petitions as also the parties thereof are inter linked to each other, therefore, with the consent of the parties, both of them have been heard together and are being disposed of by this common judgment.

2. The matter at issue is the claim of pre-emption of original respondent no.5-Brahmdeo Sah of CWJC No. 10392 of 2005, who is now dead and has been substituted by his heirs and legal representatives, with respect to lands under dispute originally belonging to the respondent no.6-Satya Narayan Sah of that case.

3. The petitioner of CWJC No. 10392 of 2005 namely, Ramu Bhagat, is aggrieved by order dated 27.06.2005 (Annexure-4) passed in Board's Revision Case No. 175 of 2003 by the respondent Member, Board of Revenue, Bihar, Patna, whereby the aforesaid revision application filed on behalf of the original respondent no.5-Brahmadeo Sah has been allowed after setting aside and reversing the orders passed by the original authority as also the appellate authority, and the petitioner Ramu Bhagat, who was opposite party no.6 in that revision case, has been directed to execute the sale deed in favour of pre-emptor Brahmdeo Sah within a period of two months failing which the respondent DCLR, Madhepura will execute the sale deed in his favour.

4. The petitioners of CWJC No. 10278 of 2011 are heirs and legal representatives of aforesaid Brahmdeo Sah, the original pre-emptor with respect to the lands under dispute, and they have filed the aforesaid writ petition seeking a direction to the respondent no.4, DCLR, Madhepura to execute the sale deed in their favour in the light of the aforesaid order dated 27.06.2005 passed in Board's Revision Case No. 175 of 2003 by the Member, Board of Revenue, Bihar, Patna. Aforesaid order dated 27.06.2005 has been annexed as Annexure-6 in CWJC No. 10278 of 2011 and as Annexure-4 in CWJC No. 10392 of 2005.

5. Since the facts as also the parties of both the writ petitions are inter linked and common to a great extent, therefore, for the purposes of disposal of both the writ petitions, the facts appearing in CWJC No. 10392 of 2005 are being noticed. It is not in dispute that the respondent no.6 Satya Narayan Sah, being the rightful owner of the lands under dispute, fully detailed in paragraph 3 of the writ petition, executed a sale deed on 07.06.2000 in favour of respondent no.7 Kamli Devi. Original respondent no.5 Brahmdeo Sah claiming to be co-sharer of the vendor Satya Narayan Sah as also the adjoining raiyat of the vended plots filed pre-emption case under Section 16 (3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "Land Ceiling Act"), which gave rise to Pre-emption Ceiling Case No. 07 of 2000-2001. However, before the aforesaid pre-emption ceiling case could be filed by the original respondent no.5 Brahmdeo Sah, original transferee Kamli

Devi, respondent no.7, transferred the land in question in favour of the writ petitioner Ramu Bhagat on 08.07.2000. The pre-emption ceiling case filed on behalf of the original respondent no.5 Brahmdeo Sah before the respondent DCLR, Madhepura was dismissed by order dated 03.02.2001 (Annexure-2) by holding therein that the land in question is homestead lands of the purchaser and therefore the pre-emption application is not maintainable. The pre-emptor Brahmdeo Sah, being aggrieved by the order passed by the respondent DCLR, Madhepura preferred an appeal before the respondent District Collector, Madhepur giving rise to Pre-emption Ceiling Case No. 04 of 2001, which was finally dismissed by order dated 02.08.2003 (Annexuire-3) on the same ground and the order passed by the respondent DCLR, Madhubani was affirmed. The pre-emptor Brahmdeo Sah still being aggrieved by the aforesaid two orders, preferred revision case before the Board of Revenue under Section 32 of the Land Ceiling Act, which gave rise to Board's Revision Case No. 175 of 2003, and it was finally allowed by the impugned order dated 27.06.2005 (Annexure-4) and the orders passed by the respondent DCLR, Madhepura and the respondent District Collector, Madhepura, vide Annexures- 2 and 3 respectively, were set aside and reversed by holding therein that the land in question is agricultural land, and. therefore, pre-emptor cannot be denied the right of pre-emption.

6. Learned senior counsel appearing on behalf of the petitioner of CWJC No. 10392 of 2005 submits that admittedly the petitioner Ramu Bhagat had purchased the land in question on 08.07.2000 i.e. prior to the date of filing of the pre-emption case by the original respondent no.5 Brahmdeo Sah. According to him, in the aforesaid pre-emption case, the claim of pre-emption was raised on the basis of transfer made by the respondent no.6 in favour of the respondent no.7. It is contended that since the transfer made in favour of the petitioner was not the subject matter in the pre-emption proceeding, therefore, the respondent Member, Board of Revenue, has committed an illegality in allowing the claim of pre-emption of the original respondent no.5 by directing the petitioner to execute a sale deed in his favour. It is highlighted that if a co-sharer of a vendor or adjoining raiyat of the vended plot, lodges a claim of pre-emption under Section 16 (3) of the Land Ceiling Act, then the pre-emptor is required to file an application before the Collector under the Act for transfer of the land to him on the terms and conditions contained in deed of such transfer. It is pointed out that in none of the orders passed either by the original authority or the appellate authority or the revisional authority, it is mentioned that the original pre-emptor had raised his claim of pre-emption with respect to the transfer made in favour of the petitioner Ramu Bhagat after fulfilling the conditions of depositing the purchase money together with a sum equal to ten per cent thereof. It was also contended that on the land in question the petitioner has constructed a residential house and in view of change of nature of the land, it is no longer an agricultural land and, therefore, pre-emption application is liable to be dismissed on that ground also.

7. The matter has been contested by the learned counsel appearing on behalf of the substituted heirs of the original respondent no.5 Brahmdeo Sah. He contends that before all the three statutory authorities, the petitioner was a party, but these issues of facts were not raised either before the original authority or before the appellate authority, and before the revisional authority, the petitioner chose not to appear and not to contest the claim of pre-emption raised on behalf of the original respondent no.5. Therefore, it is pleaded that the submissions raised on behalf of the petitioner are liable to be rejected. He further contends that the order passed by the respondent Member, Board of Revenue, is quite a reasoned order and therefore it is fit to be affirmed and respondent no.4 may be directed to execute the sale deed in favour of the heirs and legal representatives of the original pre-emptor. Lastly, it is contended that the submissions made on behalf of the petitioners have not been pleaded in the present writ petition, therefore, the submissions are fit to be rejected by this Court.

8. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires re-consideration and a fresh decision from the stage of original authority i.e. the respondent DCLR, Madhepura. Indisputably, the petitioner purchased the land in question on 08.07.2000 from the first transferee Kamli Devi, respondent no.7. The pre-emption case by the original respondent no.5 Brahmdeo Sah was filed subsequent to that on 24.07.2000.The pre-emption application was filed by the pre-emptor in Form L.C. 13. A photo copy of certified copy of Form L.C.13 has been produced by the learned senior counsel appearing on behalf of the petitioner during course of hearing of the case, from perusal of which this Court does not find that the pre-emption application was filed with respect to transfer made in favour of the present petitioner, rather it appears that the claim of pre-emption was raised on behalf of the original respondent no.5 with respect to transfer made in favour of the respondent no.7. However, from perusal of the order dated 03.02.2001 (Annexure-2) of the respondent DCLR, Madhepura it appears that subsequently, the present petitioner was also impleaded as party in the pre-emption case before the respondent DCLR, Madhepura. Though the claim of pre-emption of original respondent no.5 was rejected by aforesaid order dated 03.02.2001, but this Court does not find any discussion regarding the transfer of land made in favour of the petitioner by the original purchaser, respondent no.7. The claim of pre-emption of original respondent no. 5 was rejected on altogether different ground. Similarly, the respondent District Collector had simply not taken into consideration this aspect of the matter. The respondent Member, Board of Revenue though has allowed the claim of pre-emption by impugned order dated 27.06.2005 (Annexure-4), but he has also failed to take into consideration that the transfer of the land in question was made in favour of the petitioner prior to filing of the pre-emption case by the original respondent no.5. It is evident that the purchase made by the petitioner was not during pendency of the pre-emption case filed by the aforesaid respondent no.5. Therefore, doctrine of lis pendens shall not apply in this case. That being the position and in the pre-emption case, the claim having not been raised on behalf of the respondent no.5 with respect to transfer of land made in favour of petitioner by the respondent no.7, the orders passed by all the three statutory authorities cannot legally hold the field. Respondent DCLR has rejected the claim of pre-emption merely by looking to the report of the Anchal Adhikari. He does not appear to have applied his independent judicial mind to the entire facts of the case. Similar was the case with the respondent District Collector who passed the appellate order on 02.08.2003. The issues raised on behalf of the petitioner, noticed above, go to the root of the matter, therefore, even if these issues were not raised earlier before the authorities concerned or have not been pleaded in the present writ petition, then also, for the ends of justice, the petitioner cannot be prevented from raising such issues. However, these issues of facts are required to be examined and conclusively decided by the statutory authorities by looking to the materials available on the record as also after giving an opportunity of hearing to the parties.

9. For the reasons recorded above, the impugned order dated 27.06.2005 (Annexure-4) passed in Board's Revision Case No. 175 of 2003 by the respondent Member, Board of Revenue, Bihar, Patna as also the order dated 03.02.2001 (Annexure-2) passed in Pre-emption Ceiling Case No. 7 of 2000-2001 by the respondent DCLR, Madhepura, the appellate order dated 02.08.2003 (Annexure-3) passed in Ceiling Case No. 04 of 2001 by the respondent District Collector, Madhepura and all the consequential action taken or order (s) passed by the authorities are hereby set aside and quashed and entire matter is remitted back to the respondent DCLR, Madhepura for deciding the claims of the parties afresh strictly in accordance with law. If need be, he shall either himself make an inspection of the land in question or get the inspection/enquiry conducted by any other competent authority in presence of the parties regarding nature of the land in question. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them before the respondent DCLR, Madhepura.

10. In the result, CWJC No. 10392 of 2005 is allowed to the extent indicated, but with the observations and directions made above. Since order dated 27.06.2005 passed by the respondent Member, Board of Revenue, Bihar, Patna in Board's Revision Case No. 175 of 2003 has been set aside and quashed by the present order,. CWJC No. 10278 of 2011 stands accordingly disposed of as infructuous. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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