

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13980 of 2008

1. Kamaljeet Rai
2. Dilram Rai
3. Vinay Kumar Rai
All sons of Late Sidhnath Rai
4. Bindhyachal Rai son of Late Dudhnath Rai, all are resident of village Gaighat, Police Station Simari, District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Buxar.
4. The Land Reforms Deputy Collector, Dumraon.
5. Anchal Adhikari, Simari, District- Buxar.
6. Kiran Devi Wife of Sri Lal Babu Rai, resident of village Gaighat, Police Station Simari, P.O. Asha Padri, Sub-Division Dumraon, District- Buxar.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 14217 of 2008

1. Kamaljeet Rai
2. Dilram Rai
3. Vinay Kumar Rai
All sons of Late Sidhnath Rai
4. Bindhyachal Rai son of Late Dudhnath Rai, all are resident of village Gaighat, Police Station Simari, District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Buxar.
4. The Land Reforms Deputy Collector, Dumraon, Distt. Buxar.
5. Anchal Adhikari, Simari, District- Buxar.
6. Vindhyachali Devi Wife of Chhote Lal Rai, resident of village Gaighat, Police Station Simari, P.O. Asha Padri, Sub-Division Dumraon, District- Buxar.

.... Respondent/s

Appearance :

(In CWJC No. 13980 of 2008)

For the Petitioner/s : Mr. Diwakar Pd. Karn
Mr. Chandra Shekhar Anand
For the Respondent No.1 to 5:Mr. Naresh Prasad, AC to SC 20
For the Respondent No. 6 : Mr. R.S. Pradhan, Sr. Adv.
Mr. Ranjeet Chaubey
Mr. Jainendra Kumar Singh

(In CWJC No. 14217 of 2008)

For the Petitioner/s : Mr. Diwakar Pd. Karn
Mr. Chandra Shekhar Anand
For the Respondent No.1 to 5:Mr. Kundan Bahadur Singh, SC-22
For the Respondent No. 6 : Mr. R.S. Pradhan, Sr. Adv.
Mr. Ranjeet Chaubey
Mr. Jainendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 31-08-2015

Heard the parties.

2. In both the writ petitions issues of facts and law involved are almost similar and identical; therefore, with the consent of parties, both the writ petitions have been heard together and are being disposed of by this common judgment.

3. The matter at issue is the claim of pre-emption raised on behalf of the petitioners under Section 16(3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (In short “the Land Ceiling Act”) with respect to the land purchased by respondent no.6 of both the writ petitions from their common vendor Ramashankar Rai.

4. It is not in dispute that the respondent no. 6 of both cases purchased parcels of land through two different sale deeds both executed on 04.09.2002. Copies of the respective sale deeds have been brought on record as Annexure-1 in each of the writ petition. In C.W.J.C. No. 13980 of 2008 the transfer made by one Ramashankar Rai in favour of respondent No.6 Kiran Devi, is the subject matter of pre-emption proceeding. Similarly in C.W.J.C. No. 14217 of 2008 the sale deed executed by aforesaid Ramashankar Rai in favour of respondent no.6 Vindhyachali Devi is the subject matter of pre-emption proceeding.

5. The petitioners filed their separate pre-emption cases



with respect to the aforesaid two sale deeds executed by aforesaid Ramashankar Rai, which gave rise to Pre-emption Case No. 9 of 2002-03 and Pre-emption Case No. 8 of 2002-03 respectively in the court of respondent D.C.L.R., Dumraon. In both the pre-emption cases, indisputably, vendor Ramashankar Rai was not impleaded as a party. The pre-emption cases filed on behalf of the petitioners were finally dismissed by separate order dated 16.11.2002, which have been annexed as Annexure-3 separately in both the writ petitions. The orders passed by the respondent D.C.L.R. were reversed by the respondent District Collector, Buxar and the claim of pre-emption of the petitioners was allowed vide order dated 5.4.2005 passed by the appellate authority. The appellate orders have been brought on record as Annexure-4 in both the writ petitions. The private respondent no. 6 of both the writ petitions, being aggrieved by the aforesaid appellate orders, preferred their respective ceiling revision cases in terms of Section 32 of the Land Ceiling Act and their revision applications were allowed by the impugned order dated 19.11.2007, which have been brought on record as Annexure-5 in both the writ petitions.

6. Learned counsel appearing on behalf of the petitioners submits that the petitioners are co-sharer of the vendor, therefore, the orders passed by the original authority as also the revisional authority rejecting their claim of pre-emption are not sustainable. It is pleaded that revisional authority should have affirmed the order passed by the appellate authority.

7. The matter has been contested by the learned counsel appearing on behalf of the respondents. Learned counsel appearing on behalf of the respondent no. 6 submitted that the pre-emption cases filed on behalf of the petitioners were not maintainable as the vendor Ramashankar Rai was not impleaded as party. It is contended that in

absence of the vendor being a party in the pre-emption proceedings, both the pre-emption applications filed on behalf of the petitioners were fit to be rejected at the very threshold. It is also submitted that Rule 19 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 (In short "Rules, 1963") is mandatory in nature and since Rule 19 of Rules, 1963 has not been complied with in these cases, therefore, the orders passed by the original authority as also the revisional authority are fit to be affirmed and both the writ petitions filed on behalf of the petitioners are liable to be dismissed with costs. In support of his above contention he has placed reliance on a judgment by a learned Single Judge of this Court in the case of **Siyawati Devi v. State of Bihar** [2005(3) PLJR 352].

8. In order to examine the points raised on behalf of the parties, it would be apposite to reproduce Rule 19 of the Rules, 1963, which reads as follows:

"19. Application by co-sharer or a raiyat of adjoining land for transfer of land under Section 16(3):-

(1) Application by co-sharer or raiyat of adjoining land for transfer of land under Section 16(3) shall be in Form L.C. 13 and the purchase money together with a sum equal to ten percent thereof shall be deposited in the treasury/ Sub-treasury of the district within which the land transferred is situated.

(2) A copy of the challan, showing deposit of the amount under sub-rule (1) together with a copy of the registered deed, shall be filed along with the application in which also a statement to this effect shall be made.

(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with Acknowledgement due.

(4) The Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date to be specified in the notice and after giving the parties concerned a reasonable

opportunity of showing cause, if any, and of being heard, shall by an order in writing, either allow the application in accordance with clause (iii) of sub-section (3) of Section 16, or reject it.

(5) If the application is allowed under item (iii) of sub-section (3) of Section 16 and the transferee is directed by the Collector by any order to convey the land in favour of the applicant by executing and registering a document of transfer, the applicant shall be required to pay the registration fee.

(6) Where the application is allowed and the transferee conveys the land in favour of the applicant under Section 16(3) (iii), the transferee shall be allowed to withdraw the money deposited by the applicant”.

9. From plain reading of Sub-rule (3) of Rule 19 of Rules, 1963, it is apparent that once an application is filed either by co-sharer of transferor, or a raiyat of adjoining plot for transfer of land under Section 16(3) of the Land Ceiling Act in a prescribed Form L.C. 13, then copy of the said application is required to be sent simultaneously by the applicant to the transferor as also the transferee by a registered post with acknowledgement due. Rule 19(4) of the Rules, 1963 mandates that the Collector under the Act shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date fixed, so that the claim of pre-emption raised under Section 16(3) of the Land Ceiling Act is considered and decided. In sub-Rule (3) and Sub-Rule (4) of Rule 19 of the Rules, 1963 the term used is “shall”, which means “must”. Therefore, unless and until the transferor is impleaded as a party in the pre-emption proceeding, the proceeding cannot effectively proceed in accordance with law. On an examination of the tenor of whole Rule 19 of the Rules, 1963, this Court is of the opinion that the provisions are mandatory in nature and not directory/ optional in nature. Aforesaid conclusions arrived at by this Court finds support from a decision of

yet another learned Single Judge of this Court in the case of **Ram Chandra Singh vs. Sub-divisional Officer, Hajipur** [AIR 1989 Patna 50]. Paragraph-13 of the aforesaid judgment would be relevant and is reproduced herein below:-

“From a perusal of the Rule 19 of the Bihar Land Ceiling Rules, it is evident that the notice of the application has to be sent simultaneously to the transferor and the transferee by registered post with A/D by the applicants. In term of Rule 19(4) of the said Rules, the Collector is bound to issue notice to the transferor and give an opportunity of showing cause to the transferor as also the transferee. Rule 19 of the Rules is mandatory in nature and in absence of any notice having been given to the transferor, the entire proceeding becomes vitiated in law”.

10. Now, coming to present cases, this Court finds that admittedly transferor Rama Shankar Rai was not impleaded as a party in both the pre-emption cases before the original authority. He has not been impleaded as party even in the present proceeding filed under Article 226 of the Constitution of India. This goes to the root of the matter regarding competence of the pre-emption claims raised on behalf of the petitioners. It is well settled that the right of pre-emption is a weak right and it can be defeated by any legitimate means. In the present case, the pre-emption claims raised on behalf of the petitioners at the very threshold was incompetent and was rightly dismissed by the original authority, though on different grounds, which has been affirmed by the revisional authority after setting aside the order passed by the appellate authority.

11. In above view of the matter, this Court does not find any good ground to interfere with the impugned orders dated 16.11.2002 (Annexure-3 in both the writ petitions) passed in Pre-emption Case No. 9 of 2002-03 and Pre-emption Case No. 8 of 2002-

03 by the respondent D.C.L.R., Dumraon and the orders dated 19.11.2007 (Annexure-5 in both the writ petitions) passed in Case No. 95 of 2005 and Case No. 96 of 2005 by the respondent Additional Member, Board of Revenue, Bihar, Patna.

12. In the result, both these writ petitions have to fail and are accordingly, dismissed. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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