

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13238 of 2009

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1. Narayan Mandal, S/O Late Bholu Mandal
2. Muni Lal Mandal, S/O Sri Lakhan Mandal
Both resident of Vill.- Lal Bathani, P.S.- Amdabad, Distt.- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner Purnea Division, Purnea
3. The Collector, Katihar
4. The Additional Collector Land Ceiling, Katihar
5. The Deputy Collector Land Reforms (D.C.L.R.), Manihari, Katihar
6. Rajendra Mandal S/O Late Bechan Mandal Vill.- Kishanpur Lal Bathani, P.S.- Amdabad, Distt.- Katihar (expunged vide order dated 20.12.2010 and substituted by his following heir and legal representative)-
(i) Most.Sheema Devi, wife of late Rajendra Mandal, D/o Chiku Mandal, resident of village-Kishanpur Lal Bathani, P.S.-Amdabad, District-Katihar, at present resident of village-Chama, P.S.-Amdabad, District-Katihar.
7. Harangi Mandal, S/O Late Sarju Mandal, resident of Vill.- Balrampur, P.S.- Amdabad, Distt.- Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhirendra Kumar Jha-2
Mr. Suresh Pd.Baranwal
For the Respondent nos.1to5 : Mr. Raju Giri, GP-30
Mr.Nikhil Kumar Agrawal, AC to GP-30
For the Respondent no.6 : Ms. Rekha Prasad
Mr.Shivendra Shanker,
For the Respondent no.7 : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 20-08-2015 Heard learned counsel for the petitioners, learned State counsel appearing on behalf of the respondent nos.1 to 5 and learned counsel appearing on behalf of the respondent no.6. However, despite valid service of notice, none appears on behalf of the respondent no.7.

The present matter arises out of a proceeding 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').

The petitioners are the purchasers of the lands in question, fully detailed in para 4 of the writ petition. The original



respondent no.6 Rajendra Mandal, who is now dead and has been substituted by his heir, laid his claim of pre-emption under Section 16(3) of the Land Ceiling Act on the ground that he is the adjoining raiyat of the vended plots. The claim of pre-emption of original respondent no.6 was allowed by the respondent D.C.L.R., Manihari by the order dated 12.08.2002 (Annexure-3) passed in Ceiling Case No.02 of 2002. The appeal preferred by the petitioners was dismissed by the respondent Additional Collector (Ceiling), Katihar by his order dated 03.11.2008 (Annexure-4) passed in Appeal Case No.261 of 2002, which has been affirmed by the revisional authority by the impugned order dated 20.05.2009 (Annexure-1) passed in Ceiling Revision Case No.21 of 2008-09.

While assailing the validity and correctness of the impugned orders, learned counsel appearing on behalf of the petitioners, has raised primarily two points: firstly, that no enquiry was conducted for coming to the conclusion that the respondent no.6 was the boundary raiyat of the vended plots and; secondly, that the petitioners are the landless persons and have purchased the lands in question for construction of their residential house. Therefore, pre-emption application filed on behalf of the respondent no.6 was not maintainable.

The matter has been contested by the learned counsel appearing on behalf of the respondent no.6. According to her, concurrent findings of fact have been recorded by all the three authorities that the original respondent no.6 is/was the boundary raiyat of the vended plots and, therefore, his claim of pre-emption has been allowed. It is pleaded that, in view of the concurrent findings of fact recorded by all the three authorities, the petitioners are not entitled to raise that issue of fact once again in a proceeding under Article 226 of the Constitution of India.

However, so far the plea raised on behalf of the petitioners that they are landless persons, learned counsel appearing on behalf of the respondent no.6 has not been able to satisfy this Court that though this plea was raised on behalf of the petitioners, but this plea was taken into consideration and conclusively decided by the statutory authorities while passing the impugned orders.

It is now well settled by a number of decisions of this Court including the decision by a Division Bench of this Court in the case of Nathuni Singh Yadav & Anr. Vs. The State of Bihar & Ors. [1997 (2) PLJR 287] that pre-emption application filed under Section 16(3) of the Land Ceiling Act is not maintainable with respect to transfer of land if the transferee is a landless person. Since the petitioners had/have taken a plea that they are landless persons, this goes to the root of the matter, but unfortunately this issue has not been decided by any of the statutory authorities, while passing the impugned orders with respect to the claim of pre-emption of the respondent no.6.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that this matter requires re-consideration and fresh decision only on limited point as to whether the petitioners are landless persons and having less than one acre of land or not. So far the issue as to whether the respondent no.6 is adjoining raiyat of the vended plots is concerned, that cannot be permitted to be agitated once again in the present proceeding filed under Article 226 of the Constitution of India, in view of the concurrent findings of fact recorded by all the three authorities that the respondent no.6 is/was the adjoining raiyat of the vended plots.

For the reasons recorded above, the impugned order dated 12.08.2002(Annexure-3) passed by the respondent D.C.L.R., Manihari in Ceiling Case No.02 of 2002, the appellate order dated

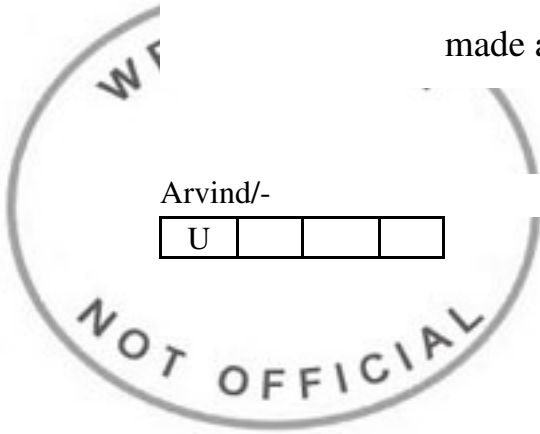


03.11.2008 (Annexure-4) passed by respondent Additional Collector (Ceiling), Katihar in Appeal Case No.261 of 2002, as also the impugned revisional order dated 20.05.2009 (Annexure-1) passed in Ceiling Revision Case No.21 of 2008-09 by the respondent no.2 are hereby set aside and quashed only for a limited purpose for examining the case of the petitioners as to whether they are landless persons, and the matter is remitted back to the respondent D.C.L.R., Manihari for examining the aforesaid claim of the petitioners. If on examination of the materials and after giving an opportunity of hearing to the concerned parties, the respondent D.C.L.R. comes to a conclusion that the petitioners are either landless persons or having less than one acre of land, apart from the land purchased by them, then the pre-emption application filed on behalf of the respondent no.6 shall be held to be not maintainable. However, if it is found that the petitioners are having more than one acre of land, apart from the lands in question, then in that case, the respondent D.C.L.R. shall allow the claim of pre-emption of the respondent no.6. So far issue of respondent no.6 being the boundary raiyat is concerned, that has been conclusively decided by all the three authorities. Therefore, the petitioners cannot be permitted to raise that issue once again in the present proceeding. In view of concurrent findings of facts recorded by all the three authorities that the respondent no.6 is the boundary raiyat of the vended plot, the writ petition to that extent is dismissed.

In the result, the writ petition stands allowed only to the extent indicated above and the matter is remitted back to the respondent D.C.L.R., Manihari for deciding the issue indicated in the preceding paragraph.

In order to expedite the matter, the petitioners as also the substituted respondent no.6 are hereby directed to appear

before the respondent D.C.L.R., Manihari within a period of four weeks from today with a certified copy of the present order, whereafter he shall fix a firm date and shall proceed further in accordance with law in the light of the observations and directions made above.



(Birendra Prasad Verma, J)