

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13287 of 2009

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Bipin Kumar, S/O Late Sarju Kunwar, resident of Village- Itahari, P.S- Naya Ram Nagar, Distt-Munger

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Munger Division, Munger
3. The Additional Collector, Munger
4. The Deputy Collector, Land Reforms, Munger, Distt- Munger
5. Most. Narmada Devi, W/O Late Bhola Singh, Vill- Itahari, P.S- Naya Ram Nagar, Distt- Munger
6. Shri Bambam Kumar, S/O Late Bhola Singh Vill-Itahari, P.S- Naya Ram Nagar, Distt- Munger
7. Shri Harhar Kumar S/O Late Bhola Singh Vill-Itahari, P.S- Naya Ram Nagar, Distt- Munger
8. Shri Fulan Kumar S/O Late Bhola Singh Vill-Itahari, P.S-Naya Ram Nagar, Distt-Munger
9. Shri Sachin Bharti S/O Late Bhola Singh Vill-Itahari, P.S- Naya Ram Nagar, Distt-Munger
10. Shri Naresh Singh S/O Late Bhola Singh Vill- Itahari, P.S- Naya Ram Nagar, Distt- Munger
11. Shri Niraj Kumar S/O Shri Naresh Singh Vill- Itahari, P.S- Naya Ram Nagar, Distt- Munger, Minor Represented Through Their Father And Natural Guardian- Shri Naresh Singh
12. Shri Dhiraj Kuamr S/O Shri Naresh Singh Vill-Itahari, P.S- Naya Ram Nagar, Distt-Munger, Minor, Represented Through Their Guardian- Shri Naresh Singh
13. Shri Rahul Kumar S/O Shri Naresh Singh Vill-Itahari, P.S- Naya Ram Nagar, Distt- Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha
Mr. Shree Ganesh

For the Respondent nos.1to 4:Mrs. Kumari Amrita, GP-10
Mr.Mithilesh Kumar Upadhyay, AC to GP-10

For the Respondent nos.5to9 :Mr.Amod Kumar
Mr.Bipin Kumar

Mr.Ram Vinay Prasad Singh @ Sanjay
For the Respondent nos.10 to 13 : Mr.Uday Bhan Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

11 19-08-2015

Heard the parties.

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 petitioner is the purchaser of the lands in question bearing khata no.40, plot no.452, area 25 decimals situate at village-Itahari, Police Station-Naya Ram Nagar, District Munger (hereinafter to be referred to as the 'lands in question'). The respondent nos.5 to 9 filed their petition under Section 16(3) of the Land Ceiling Act raising their claim of pre-emption with respect to vended land on the ground that they are the boundary raiyats. The claim of pre-emption raised on behalf of the pre-emptors i.e. respondent nos.5 to 9 was allowed by the respondent D.C.L.R., Sadar, Munger by the order dated 07.12.2001 (Annexure-3), which was finally affirmed, after few round of litigation, by the appellate authority as also the revisional authority. Now, the petitioner is aggrieved by the final revisional order dated 20.05.2009 (Annexure-11) passed in Land Ceiling Revision No.38 of 2008 by the respondent Divisional Commissioner, Munger, whereby the aforesaid revision application filed on behalf of the petitioner has been dismissed and the orders passed by the original authority as also the appellate authority have been affirmed.

Learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned orders, has raised only two points: firstly, that the petitioner is a landless persons and, therefore, the claim of pre-emption raised on behalf of the respondent nos.5 to 9 was not maintainable and; secondly, that the pre-emptors are not the boundary raiyat of the vended plot. Therefore, according to him,

the impugned orders are not sustainable in law.

The matter has been contested by the learned GP-10 appearing on behalf of the respondent nos.1 to 4 and learned counsel appearing on behalf of the respondent nos.5 to 9. They submitted that so far the issue of respondent nos. 5 to 9 being the boundary raiyat is concerned, that has been concurrently decided by the original authority, appellate authority as also the revisional authority after several round of litigations. Therefore, the petitioner cannot be permitted to raise that issue once again. However, so far the issue of petitioner being the landless person is concerned, they have not been able to show that any conclusive finding has been recorded by the authorities concerned.

After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that so far the issue of respondent nos.5 to 9 being the boundary raiyat is concerned, that has been concurrently and conclusively decided by all the three authorities against the petitioner. Therefore, the petitioner cannot be permitted to raise that issue once again. In view of concurrent findings of facts recorded by all the three authorities that the respondent nos.5 to 9 are the boundary raiyat of the vended plot, the writ petition to that extent is dismissed. However, so far the issue of the petitioner being the landless person is concerned, this Court finds that, that issue was raised at the very threshold before the respondent D.C.L.R., but in a casual manner. This issue was again raised even before the respondent Divisional Commissioner, Munger, which has been noticed in the impugned order dated 20.05.2009 (Annexure-11). Though, pleadings are there from the side of the petitioner as also from the side of the respondent nos. 5 to 9, but

that issue has not been conclusively decided even by the revisional authority. In view of number of decisions of this Court, it is now well settled that pre-emption application is not maintainable with respect to a purchase of land made by the landless person. In that view of the matter, this Court is of the opinion that this issue is required to be conclusively decided once and for all by the revisional authority.

For the reasons recorded above, this matter is remitted back to the respondent Divisional Commissioner, Munger only for the purposes of examining the claim of the petitioner that he is a landless person. The petitioner shall not be permitted to raise any other plea regarding the claim of pre-emption raised on behalf of the respondent nos.5 to 9. The respondent Divisional Commissioner, Munger shall examine all the materials produced by the petitioner as also the respondent nos.5 to 9 and then he shall record a finding of fact as to whether the petitioner is a landless person or not. He shall also be at liberty to get the matter enquired into by any other competent authority under the Land Ceiling Act. On examination of the materials produced by the parties and on examination of the enquiry report, if any, if the respondent Divisional Commissioner, Munger comes to a conclusion that the petitioner is a landless person, then he shall modify his previous order accordingly and pass appropriate fresh order regarding the claim of pre-emption of respondent nos.5 to 9. However, if he comes to a conclusion that the petitioner is not a landless person or having more than one acre of land, then in that case, he shall affirm the order passed by him allowing the claim of pre-emption of respondent nos.5 to 9.

It is clarified once again that no other issue excepting

the issue indicated-herein above is required to be examined by the respondent Divisional Commissioner, Munger, in the light of present remand order.

In order to facilitate early disposal of the matter, the petitioner, the respondent nos.5 to 9 as also the respondent nos.10 to 13 are hereby directed to appear before the respondent Divisional Commissioner, Munger within a period of four weeks from today with a certified copy of the present order, whereafter a firm date shall be fixed and the matter shall be decided afresh in the light of the observations and directions made above.

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

(Birendra Prasad Verma, J)

Arvind/-

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