

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.239 of 2015

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Jagdish Singh, Son of Lal Dhari Singh, Resident of Village - Rasulpur Korigaoun,
P.S- Goraul Distt- Vaishali.

.... Petitioner/s

Versus

1. Smt. Jailas Devi, Wife of Sri Asarfi Prasad Singh, Resident of Village -
Rasulpur Korigaoun, P.S- Goraul, Distt- Vaishali.
2. Shiv Chandra Singh, Son of Lal Dhari Singh, Resident of Village - Rasulpur
Korigaoun, P.S- Goraul Distt- Vaishali.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 02-02-2015

Heard Mr. Hemant Kumar, learned counsel for the
petitioner.

The pre-emptor has filed the application questioning
the order dated 06th November, 2014 passed by the Bihar Land
Tribunal in B.L.T. Case No. 816 of 2013. Small tract of land
measuring 13 decimals was sold by the respondent no. 2 in favour of
respondent no. 1. The petitioner claiming to be co-sharer of the
vendor filed ceiling case under Section 16(3) of the Bihar Land
Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)

Act, 1961 (for short the 'Ceiling Act'). The Deputy Collector, Land Reforms by order dated 10.12.2009 allowed the same. The purchaser filed appeal, which was dismissed vide order dated 20.08.2011. The purchaser carried revision application thereagainst vide Revision Case No. 213 of 2011. The revisional authority allowed the said revision application on the grounds that the purchaser was a landless lady. Dissatisfied therewith the pre-emptor petitioner approached the tribunal and by the impugned order, the same has been considered and rejected observing as under:

“5. Leaving apart these grounds the most important ground for allowing the revision application, as mentioned in the impugned order of the Divisional Commissioner is that purchaser is a landless lady and the equity demands that in case of a landless person, application under Section 16(3) of Ceiling Act should not have been entertained. In support of her claim, opposite party No. 1 has placed reliance on decisions reported in 2005 (2) P.L.J.R.24 Bharat Prasad & Anr. Versus The State of Bihar & Others as well as 2007 (2) P.L.J.R. 207 Md. Alam Versus Additional Member, Board of Revenue and Others and 2006 (2) P.L.J.R. 592 Smt. Satya Bhama Chaudharain Versus State of Bihar & Others and 1997 (2) P.L.J.R. 287 Nathuni Singh Yadav and Anr. Versus The State of Bihar & Others. In these reported decisions it has been held that a pre-emption application will lie only when all the three parties, the transferor, the transferee and the pre-emptor are land holder. The right of pre-emption, although created by statute, is a clog on the right of a person to acquire land. There are no equities in favour of a pre-emptor, if a landless purchaser is not allowed the

protection. It may mean, taking the matter to its logical conclusion, that he cannot acquire any land, in the event any claim is made by a co-sharer or adjacent raiyat of the land transferred, he cannot resist the claim as in terms of provision only such persons, who are either a co-sharer or adjacent raiyat can resist the claim."

The petitioner has contended that the husband of the preemptor possess land. It does not appear from the impugned order that any such contention was raised before the Tribunal.

Regard being had to above, this Court is satisfied that the order passed by the Tribunal does not merit any interference.

The writ application is dismissed.

(Kishore Kumar Mandal, J.)

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