

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2192 of 2015

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Ishwar Dayal son of late Sukar Mahto, resident of village-Sipah, P.O. Ranabigha,
P.S. Deepnagar, Dist. Nalanda (Bihar)

.... Petitioner

Versus

1. The State of Bihar
2. The Bihar Land Tribunal, Patna.
3. The Divisional Commissioner, Patna Division, Patna (Bihar).
4. The Collector, Nalanda at Biharsharif.
5. The Additional Collector, Nalanda at Biharsharif.
6. The Deputy Collector Land Reforms, Nalanda at Biharsharif.
7. Smt. Sarojni Kumari wife of Sri Nand Kumar Prasad, resident of village-
Ratanpura, P.O. Dharnara, P.S.Noorsarai, Dist. Nalanda.
8. Sri Pramod Prasad @ Jamuna Prasad son of late Sukar Mahto, resident of
village Sipah, P.S. Deepnagar, Dist-Nalanda at Biharsharif.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Indu Shekhar Dwivedi

For the Respondent/s : Mr. R.N.Dubey, AAG-12

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 04-02-2015

Heard Mr. T.N. Maitin Senior Counsel for the
petitioner and AC to AAG-12 for the State.

A small tract of land measuring 11 and ½ decimals
was purchased on a comparatively high price of Rs. 74,500/- by the
respondent. The petitioner finding his name in the sale deed as
adjacent raiyat filed an application under Section 16(3) of the Bihar
Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus
Land) Act, 1961 (for short ‘the Act’). The Deputy Collector Land
Reforms after hearing the parties rejected the said application by order
dated 22.01.2010 (Anenxure-6) considering the submission of the



respondent-purchaser that the land was close to Village, adjacent to a pucca road constructed under the 'Pradhan Mantri Gramin Sadak Yojana', and not far off from the National Highway. The purchaser had purchased the land for construction of house. She was not an agriculturist although described as such in the sale-deed. Aggrieved thereby the petitioner filed an appeal. On a consideration of the submission and after perusal of the records, the appellate Authority by order dated 17.12.2012 (Annexure-7) rejected the appeal. Dissatisfied therewith a revision application was filed by the petitioner which also stood rejected by order dated 16.04.2014 (Annexure-9) passed by the revisional Authority. The petitioner assailed the aforesaid order before the Bihar Land Tribunal (for short 'the Tribunal') constituted under the Bihar Land Tribunal Act, 2009 vide B.L.T. case no. 539 of 2014. The Tribunal considered the case of the petitioner and found no legal infirmity with the revisional order meriting interference. The reason which persuaded the Tribunal to reject the case of the petitioner is summarized in para 6 of the order which is reproduced hereinbelow:-

“6. However, on perusal of the impugned order, it is apparent that petitioner himself had admitted before the Appellate Court that the land purchased by opposite party No.6 is surrounded by a boundary wall. This only corroborates this fact that land surrounded by boundary wall will be utilized for construction of residential house. In the counter affidavit of the



State also it has been stated that area in question has been earmarked by Marketing Board as development area. This only goes to show that in no case the land in question as well as the adjacent land are going to be utilized for agricultural purposes. Main object behind the provision under section 16(3) is to restrain fragmentation of agricultural land by allowing co-sharer or adjacent raiyat to restrict transfer of such agricultural land to any such person, who is not holding any adjoining land because, otherwise it will result into fragmentation of agricultural land. In the present case, that object was not going to be fulfilled even if pre-emption application filed by the petitioner would have been allowed by the courts below. Considering the facts and circumstances of the case as well as concurrent finding recorded by all three courts, I find that there is no scope for interference with these impugned orders, otherwise also right of pre-emption is a weak right, and this can be allowed, only when there is no weakness in the claim of the pre-emptor. Pre-emption application cannot be allowed, specially when the purchased land is homestead land. Considering the concurrent finding recorded by the courts below, this application is dismissed.”

Mr. Maitin has assailed these order(s) contending that there has to be some materials to record such finding. Although the respondent no.7 asserted that she is landless lady but nothing was brought on record to demonstrate the same. In the sale-deed she has been described as ‘*kastkar*’. In absence of any legal materials the findings recorded by the Deputy Collector Land Reforms and affirmed by the Tribunal is without jurisdiction.

Counsel for the State has, however, supported the

impugned orders.

It appears that a very small tract of land was vended for a sum of Rs. 74,000/- and odd. The Courts below have noticed that the land is close to a pucca road. The respondent –purchaser claimed to be landless lady. The petitioner could have brought on record that either the respondent no.7 and/or her husband owned land in and around the area. No such effort was made by the petitioner. There is no dispute that the land is bounded by a pucca boundary wall. The petitioner has not produced any material to controvert the assertion of the purchaser that the subject land has acquired the status of a homestead land not fit for agriculture which found favour with the Authorities. Even before this Court no such material has been produced, which escaped consideration. The right of pre-emption is a weak right which can be defeated on showing that the subject land is not fit for agriculture by demonstrating the demography and other relevant facts.

Seen thus this Court is not inclined to interfere with the orders passed by the learned Court(s) below which got affirmed by the Tribunal. The writ application is dismissed.

(Kishore Kumar Mandal, J)

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