

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6420 of 2004

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Ranjeet Kumar Rai son of Sri Parmeshwar Rai, resident of village Harpur Pusa,
P.S.Pusa, District Samastipur Petitioner/s

Versus

1. The State of Bihar & Ors
2. Additional Member, Board of Revenue, Patna
3. Additional Collector, Samastipur, District Samastipur, Bihar
4. Deputy Collector, Land Reforms, Samastipur, District Samastipur, Bihar
5. Ganga Prasad Roy son of Late Ram Shreshth Roy
6. Ganesh Prasad Sharma
7. Anil Kumar Sharma
8. Rakesh Ranjan
Respondent Nos. 6 to 8 are sons of Ganga Prasad Roy
9. Asha Kumari daughter of Ganga Prasad Roy,
Respondent Nos. 5 to 9 are residents of Village Harpur Pusa, P.S.Pusa, District
Samastipur
10. Saroj Kumar Roy
11. Tarun Kumar Roy
Respondent Nos. 10 and 11 are sons of Late Tapeswar Roy and are residents
of Village Malikaur, P.S.Pusa, District Samastipur, Bihar.... Respondents
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Appearance :

For the Petitioner/s Mr. Shambhu Sharan Singh, Advocate
For the Respondent Nos. 1 to 4. Mr. Arun Kumar Sinha, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 28-10-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned State counsel appearing on behalf of the respondent nos. 1 to 4. However, none appears on behalf of the private respondents, despite service of notice upon them.

2. The matter in issue is the claim of pre-emption raised on behalf of the respondent nos. 5 to 9 with respect to vended land, fully detailed in paragraph 4 of the writ petition, under section 16(3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short “the Act”).

3. The petitioner, who is the purchaser, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 12.03.2004 passed in Board’s Case No. 155 of 2003 along with Board Case No.

154 of 2002-03, as contained in Annexure-1 series, whereby the claim of pre-emption raised on behalf of the respondent nos. 5 to 9 has been allowed and the orders passed by the original authority as also the appellate authority, as contained in Annexures-2 and 3 respectively, have been set aside.

4. It is not in dispute that in the impugned sale deed executed by the respondent nos. 10 and 11 in favour of the petitioner, the nature of land has been disclosed as agriculture in nature. The private respondent nos. 5 to 9 claiming to be the boundary raiyats filed a pre-emption case under Section 16 (3) of the Act, giving rise to Pre-emption Case No. 34 of 2001, but that was dismissed by the respondent D.C.L.R., Samastipur vide his order dated 18.07.2002 (Annexure-2) on the ground that the land in question is homestead in nature. The appeal preferred by the pre-emptors was also dismissed by the appellate authority vide order dated 09.07.2003 (Annexure-3) and the order passed by the D.C.L.R. was affirmed. The pre-emptors, being aggrieved by the aforesaid two orders, approached the Board of Revenue, Bihar under Section 32 of the Act, which has been allowed by the impugned order dated 12.03.2004 by recording a finding of fact that the land in question is agriculture in nature.

5. The learned counsel appearing on behalf of the petitioner has argued the matter at length and submitted that the nature of the land was homestead, but it was, by mistake of scribe, mentioned as agricultural in the impugned sale deed; therefore, according to him, the claim of pre-emption raised on behalf of the respondent nos. 5 to 9 was not maintainable and had rightly been dismissed by the original authority as also the appellate authority vide orders contained in annexures-2 and 3 respectively. It is contended by him that the respondent Board of Revenue has committed an error of law in allowing the claim of pre-emption raised on behalf of the pre-

emptors. However, despite repeated queries, he has not been able to show from his pleadings that the petitioner had purchased the land in question for homestead purposes or he is a landless person.

6. The learned State counsel appearing on behalf of the respondent nos. 1 to 4 has opposed the prayer of the petitioner and has supported the impugned order.

7. After having heard the parties and taking into consideration the materials available on record, this Court is of the opinion that the plea raised on behalf of the petitioner that pre-emption application filed on behalf of the pre-emptors was not maintainable on the ground that that land purchased by him was a homestead land of the vendors is completely misconceived and untenable. Section 2(f) of the Act defines the "land" which includes the homestead of the landholder. For better appreciation, Section 2(f) of the Act is re-produced herein below:

(f) "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or forest land or the land perennially submerged under water or the homestead of landholder":

Explanation I.- "Homestead" means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and includes any out building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

Explanation II.- Land perennially submerged under water shall not include submerged in the bed of a river".

8. If the landholder/vendors was having some structure over the land in question, prior to the impugned sale, and it was used as homestead, in that case also, in the considered opinion of this Court

a pre-emption application under Section 16(3) of the Act was/is maintainable. However, the facts remain that in two sale deeds executed in favour of the petitioner the nature of lands was disclosed as agriculture in nature.

9. Now, the law is well settled by the catena of decisions of our own High Court that the homestead land of the landholder is the “land” within the meaning of Section 2(f) of the Act. However, homestead of the purchaser is not the “land” for the purposes of filing pre-emption case under Section 16(3) of the Act. Reference may be made to a Full Bench judgment of our own High Court in the case of **SYED FAKIR MOHAMMAD Vs. SHEIKH SALAHUDDIN & OTHERS [1975 PLJR 1] (Full Bench)**. In the whole writ petition the petitioner has not asserted that he had converted the land in question as homestead for his residential purposes, rather, according to him, the land in question was homestead of his vendors..

10. In above view of the matter, this Court is not persuaded to interfere with the impugned revisional order dated 12.03.2004 passed in Board’s Case No. 155 of 2003 read with Board’s Case No. 154 of 2002-03 by the respondent Board of Revenue, Bihar, as contained in Annexure-1 series. The writ petition is devoid of merit and is, accordingly, dismissed. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29-10-2016
Transmission Date	