

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13663 of 2004

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Ram Swarup Singh son of Late Janki Singh, resident of Village- Kanakhap, P.O. Barhi Bazar, P.S. Rafiganj (Pauthu) Dist. Aurangabad Petitioner/s
Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Land Reforms Deputy Collector, Aurangabad.
5. Most. Rajmatia Kuar, wife of Late Jagdeo Yadav, resident of Village- Saira, P.S. Rafiganj (Panthu), P.S. Barhi Bazar, District Aurangabad.
6. Sri Bihari Singh son of Late Ram Ratan Singh (Expunged and substituted by his following heirs and legal representatives:)
 6. (A) Kapil Singh
 - (B) Baliram Singh, both sons of late Bihari Singh, all residents of village Luka, P.O. Barhi Bazar, P.S. Rafiganj (Pauthu), Dist. Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Kr. Singh, Adv.

For the Respondent Nos.1 to 4 : Mr. M.K. Upadhyay, AC to G.P. 3

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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 AC to G.P. 3 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.

The matter in issue is the claim of pre-emption raised on behalf of the petitioner with respect to the vended lands, detailed in paragraph 4(i) 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 "Land Ceiling Act").

The petitioner is the pre-emptor of the vended lands, whereas the respondent no.5 is the purchaser and the original respondent no.6, who is now dead and has been substituted by his heirs, was the vendor. The claim of pre-emption raised on behalf of the petitioner was dismissed by the respondent D.C.L.R., Aurangabad



by his order dated 5.10.2001 (Annexure-3). However, on appeal, being filed by the petitioner, the aforesaid order was set aside by the respondent Additional Collector, Aurangabad by his order dated 3.2.2004 (Annexure-4). The purchaser, being aggrieved by the aforesaid order, preferred Board Case No. 57 of 2004 before the Board of Revenue, Bihar, Patna under Section 32 of the Land Ceiling Act, which has been finally allowed by the impugned resolution dated 21.8.2004 (Annexure-5) and the order of the respondent Additional Collector, Aurangabad has been set aside and that of the respondent D.C.L.R., Aurangabad affirmed.

It is not in dispute that in the impugned sale deed, the nature of the lands has been recorded as agriculture in nature. It is also not in dispute that the petitioner is the boundary raiyat of the vended plot. However, the claim of pre-emption raised on behalf of the petitioner has been rejected by the original authority as also the revisional authority on the ground that the respondent no. 5 has purchased the lands in question for construction of her residential house and for using the same as homestead land.

Section 2(f) of the Land Ceiling Act defines the “land”. According to which, homestead of the landholder is the “land” within the meaning of the Land Ceiling Act for which the pre-emption Case under Section 16(3) of the Land Ceiling Act can be filed. However, homestead of a purchaser is not the “land” within the meaning of Section 2(f) of the Land Ceiling Act. If the respondent no.5 purchased the lands in question for the purposes of construction of her residential house, then certainly the pre-emption application filed on behalf of the petitioner was not maintainable in view of the Full Bench judgment of our own High Court in the case of **SYED FAKIR MOHAMMAD VS SHEIKH SALAHUDDIN** [1975 PLJR 1]. In the aforesaid Full Bench judgement, it has been held that homestead of the landholder is

the “land” within the meaning of the Land Ceiling Act, but the homestead of the purchaser is not the “land” for the purpose of filing pre-emption case under Section 16(3) of the Land Ceiling Act. In the whole writ petition, the petitioner has not asserted that after purchase of the land in question, the respondent no.5 has not changed the nature of the land and she is not using the land in question as homestead, rather finding of the respondent Additional Member, Board of Revenue, Bihar is that she has constructed a residential house over the lands in question and she is living with her family members.

It is also well settled that the right of pre-emption is a weak right and that can be defeated by all legitimate means. In the present case, indisputably, the land in question was purchased by the respondent nos. 5 from the original respondent no. 6 for the purposes of construction of her residential house, where, in fact, she has already constructed a house, which is evident from the findings recorded by the authorities concerned.

In above view of the matter and also in view of the principles enunciated by our own High Court, referred to above, this Court is not persuaded to interfere with the impugned resolution dated 21.8.2004 passed in Board Case No. 57 of 2004 by the respondent Additional Member, Board of Revenue, Bihar, Patna, as contained in Annexure-5. The writ petition is devoid of merit and is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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