IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2566 of 2005

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Sri Ram Singh son of Late Chhathoo Singh, resident of Village Waranpura, P.S.Khaira, District Saran at Chapra .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Saran at Chapra
2. The Additional Deputy Collector, Saran at Chapra
3. The Deputy Collector, Land Reform (D.C.L.R.), Saran at Chapra
4. The Additional Member, Board of Revenue, Government of Bihar, Patna, Old Secretariat, Patna
5. Saifullah Khan
6. Aurangzeb Khan
   Both sons of Waris Khan, resident of Village Waranpura, P.S.Khaira, District Saran at Chapra
7. Sukhesh Singh son of Adalat Singh
8. Asha Kumari W/o Late Adalat Singh
9. Ramjee Singh son of Late Ram Prasad Singh
10. Kailash Singh son of Shital Singh
    Respondent nos. 7 to 10 are resident of Waranpura, P.S.Khaira, District Saran at Chapra .... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Krishna Kumar Singh, Advocate
For the Respondent Nos.1 to 4	: Mr. Pratik Kr.Sinah, AC to GA 5
For the Respondent Nos. 5 & 6	: Mr.K.N.Choubey, Sr.Advocate Mr. Sanjay Kumar Pandey, Advocate Mr. Ambuj Nayan Choubey, Advocate
For the Respondent No.7 to 10	: None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 04-08-2016

Heard the parties.

2. The matter at issue is the claim of pre-emption raised on behalf of the petitioner under Section 16(3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short, "the Act") with respect to the lands in question, fully detailed in paragraph 5 of the writ petition.

3. The petitioner is aggrieved by the order dated 22.11.2004 passed in Revision Case No. 07 of 2004 by the respondent Additional Member, Board of Revenue, Bihar, Patna, as contained in Annexure-4 to the writ petition, whereby the aforesaid revision application filed on behalf of the respondent no. 5 and 6 was allowed and the orders passed by the original authority as also the appellate authority, allowing the claim of pre-emption raised on behalf of the petitioner, have been set aside and reversed.

4. The learned counsel appearing on behalf of the petitioner submits that the petitioner is the pre-emptor, respondent nos. 5 and 6 are the purchasers and respondent nos. 7 to 10 are the heirs of original vendor of the vended plots. He further submits that the lands in question was transferred through a registered sale deed dated 14.12.2000 by the original vendor in favour of the purchasers-respondent nos. 5 and 6 herein. The petitioner claiming to be the co-sharer of the vendor filed a case of pre-emption before the respondent DCLR, Saran at Chapra under Section 16(3) of the Act giving rise to Land Ceiling Case No. 54 of 2000-2001 and after hearing the parties the respondent D.C.L.R., Saran, Chapra finally allowed the claim of pre-emption raised on behalf of the petitioner by order dated 22.08.2001 (Annexure-2) by recording a finding of fact that the petitioner is the co-sharer of the vendor as also the boundary raiyat of the vended plots. The private respondent nos. 5 and 6, being aggrieved by the aforesaid order, preferred Land Ceiling Appeal No. 47 of 2001 and after hearing the parties, the respondent Additional Collector, Saran at Chapra by his order dated 03.11.2003 (Annexure-3) dismissed the aforesaid appeal and affirmed the order dated 22.08.2001 (Annexure-2) passed by the original authority. The respondent nos. 5 and 6, still being not satisfied with the orders passed by the original authority as well as the appellate authority, preferred Revision Case No. 07 of 2004 before the Board of Revenue, Bihar, Patna under Section 32 of the Act, which was finally allowed by the respondent Additional Member, Board of Revenue, Bihar, Patna by the impugned order dated 22.11.2004 (Annexurer-4). The learned counsel appearing on behalf of the petitioner contended that while allowing the aforesaid revision case filed on behalf of the respondent nos. 5 and 6, the respondent Additional Member, Board of Revenue, Bihar, Patna has not reversed the findings of facts recorded in favour of the petitioner by the two statutory authorities, yet he has dismissed the claim of pre-emption of the petitioner with respect to lands in question. According to him, the order impugned cannot be sustained in the eye of law.

5. Per contra, the learned senior counsel appearing on behalf of the respondent nos. 5 and 6 has submitted that the petitioner is not the boundary raiyat of all the vended plots and therefore, the Additional Member, Board of Revenue, Bihar, Patna has rightly set aside the orders passed by the original authority as well as the appellate authority, as the right of pre-emption is a weak right. According to him, since the petitioner is not the boundary raiyat of all the vended plots, claim of pre-emption raised on behalf of the petitioner could not have been allowed. However, on query made by this Court, he has not been able to demonstrate from the impugned revisional order that the findings of fact recorded by the original authority as also the appellate authority that the petitioner is the co-sharer of the original vendor and lands in question was joint family properties have been reversed by the revisional authority by recording his own findings of fact on that score.

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

7. However, none appears on behalf of the respondent nos. 7 to 10 despite issuance of notices to them by this Court.

8. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the matter requires reconsideration and fresh decision by the respondent Additional Member, Board of Revenue, Bihar, Patna. Admittedly, the claim of pre-emption raised on behalf of the petitioner was allowed by the original authority as also the appellate authority by recording concurrent findings of fact that the petitioner is the co-sharer of the original vendor and the lands in question was the joint family properties, but without reversing these findings of fact, the revisional authority has dismissed the claim of pre-emption raised on behalf of the petitioner. If the revisional authority was inclined to dismiss the claim of pre-emption raised on behalf of the petitioner with respect to the vended plots, then he ought to have recorded his own findings of fact regarding claim of being the boundary raiyat of the vended plots as also the co-sharer of the vendor raised on behalf of the petitioner, but that has not been done by the revisional authority. Hence, the order impugned cannot be sustained.

9. For the reasons recorded above, the impugned revisional order dated 22.11.2004 (Annexure-4) passed in Revision Case No. 07 of 2004 by the respondent Additional Member, Board of Revenue, Bihar, Patna is hereby set aside and quashed, and the matter is remitted back to the Board of Revenue, Bihar, Patna with a direction to decide the matter afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioner as also the respondent nos. 5 to 10, besides others, if any.

10. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.08.2016
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