

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19018 of 2008

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Abdul Gafoor son of Shekha Chulhai, resident of village Gariba Balua,
P.S.K.Nagar, District Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Purnea Division, Purnea
3. Collector, Purnea
4. Deputy Collector, Land Reform, Sadar Purnea
5. Bhujdeo Prasad Mehta son of Late Ful Charan Mehta
6. Umesh Prasad Mehta son of Bhujdeo Prasad Mehta
7. Ramesh Prasad Mehta son of Bhujdeo Prasad Mehta
8. Birendra Mehta
9. Manoj Mehta
10. Jitendra Mehta son of Late Basudeo Prasad Mehta

Respondent Nos. 5 to 10 are resident of village Jariha Balua,
P.S.K.Nagar, District Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kr. Mallick, Advocate

For the Respondent Nos. 1 to 4 : Mr. M.K. Upadhyay, AC to GP 10

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 04-05-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned AC to GP 10, appearing on behalf of the respondent nos. 1 to 4.

The present writ petition arises out of a proceeding under Section 16 (3) of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short, “the Land Ceiling Act”). Admittedly, the petitioner is the purchaser of the land in question, fully detailed in paragraph 3 of the writ petition. The respondent nos. 5 to 7 are the pre-emptors and the respondent nos. 8 to 10 are the heirs of original vendor.

The claim of pre-emption raised on behalf of the



respondent nos. 5 to 7 was allowed by the respondent DCLR, Sadar, Purnea by his order dated 28.01.2005 passed in Pre-emption Case No. 15 of 2002-03 by holding therein that the pre-emptors are the boundary raiyat of the vended plots and the present petitioner is not a landless person; rather he is having more than one acre of land. It has also been held that the land in question is not a homestead land; rather agricultural land. The petitioner, being aggrieved by the aforesaid order, filed Appeal Case No. 7 of 2005, which was finally dismissed by order dated 12.10.2007 by the Additional Collector, Land Ceiling, Purnea. The petitioner, being further aggrieved by the said order, filed Revision Case No. 40 of 2007-08 before the Divisional Commissioner, Purnea, which was finally dismissed by the impugned revisional order dated 23.07.2008.

All the aforesaid three orders have been brought on record as Annexure-1 series. From the facts noticed above, it is apparent that by recording concurrent findings of fact, the claim of pre-emption raised on behalf of the respondent no. 5 to 7 has been allowed by all the three statutory authorities and the pleas raised on behalf of the writ petitioner have been rejected.

The learned counsel appearing on behalf of the petitioner submits that the petitioner is a landless person and he has purchased the land in question for homestead purposes and its nature is homestead and so the pre-emption case filed by the respondent nos. 5 to 7 was/is not maintainable. Both the points raised on behalf of the petitioner in the present writ petition were considered by the authorities concerned and it has concurrently been held by all the three authorities that the petitioner is not a landless person, rather he has more than one acre of land. Furthermore, the homestead of the landholder is "land" under the meaning of Section 2(f) of the Land

Ceiling Act and a pre-emption petition under Section 16(3) of the Land Ceiling Act against purchase of such land is maintainable. This court finds support in arriving at the above conclusion from a Full Bench judgment of this Court in the case of **Syed Fakir Mohammad Vs. Sheikh Salahuddin & others [1975 PLJR 1]**.

For the reasons recorded above, the present writ petition is devoid of merit and is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	NAFR
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