

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.13016 of 1996**

- =====
1. Sheo Kumar Jha.
  2. Shambhu Nath Jha.
  3. Bharat Jha, all sons of late Tirath Nath Jha, resident of Maheshi, P.S. Maheshi, District-Saharsa. .... Petitioner/s

Versus

1. The State of Bihar.
  2. The Additional Member, Board of Revenue, Bihar, Patna.
  3. The Additional Collector, Saharsa, District-Saharsa.
  4. The Land Reforms Deputy Collector, Saharsa, District-Saharsa.
  5. Birendra Kumar Das.
  6. Sudhir Kumar Verma.
  7. Bimal Kumar Verma, all 5 to 7 sons of late Rudra Nand Lal Das @ late Munshi Rudra Nand Lal Das.
  8. Smt. Shushila Devi, wife of late Rudra Nath Lal Das alias late Munshi Rudra Nand Lal Das, all 5 to 8 resident of village and P.S. Maheshi, District-Saharsa. .... Respondent/s
- =====

**Appearance :**

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|------------------------|--------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s : | Mr. Sanat Kumar Jha, Adv.<br>Mr. Sanjay Kumar Jha, Adv.<br>Mr. Sharda Nand Mishra, Adv.<br>Mr. Indrajeet Jha, Adv. |
| For the Respondent/s : | Mr. (GP1)<br>Mrs. Rekha Mukund, Adv.<br>Mr. Pravin Kumar Sinha, Adv.                                               |

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**CAV JUDGMENT**

**Date: 26-04-2016**

Heard the learned counsel for the parties.

This writ application has been filed by the purchaser-petitioners questioning the order dated 20.02.1995 passed in Case No. 539 of 1984 by the Additional Member, Board of Revenue Bihar (Annexure-1) and the order dated 13.10.1984 passed by the



Additional Collector, Saharsa in Land Ceiling Appeal No. 44 of 1977-78/01 of 1984-85 whereby and whereunder the claim of the preemption under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the 'Ceiling Act') as made by the respondent no. 5 has been allowed, and the prayer has been made to quash the aforesaid two orders and affirm the order passed by the Deputy Collector Land Reforms on 30.07.1977 in Case No. 05 of 1976 (Annexure-3) by which the claim of the respondent no. 5 for preemption has been dismissed.

The necessitous facts are not in dispute that the sale deed was executed by Rudra Nand Lal Das (since deceased), father of the respondent no. 5 Birendra Kumar Das in favour of Tirath Nath Jha (since deceased) for a total of 3 bigha, 13 katha and 9 dhur land of old plot nos. 6089, 6080, 6097, 6098, 6100, 6090, 6096, 6093, 6094 and 6083. The said sale deed was executed on 16.01.1975 and the registration was complete on 17.01.1976. The respondent no. 5 preferred a claim of preemption under Section 16 (3) of the Ceiling Act and on that basis Ceiling Case No. 05 of 1976 was initiated. By order dated 30.07.1977 (Annexure-3) the Land Reforms Deputy Collector-respondent no. 4 dismissed the claim of preemption as made by the respondent no. 5. The respondent no. 5 preferred Land



Ceiling Appeal No. 44 of 1977-78/01 of 1984-85 before the appellate authority-respondent no. 3 against the abovesaid order rejecting his claim of preemption. This appeal was allowed by order dated 13.10.1984 (Annexure-2) by the appellate authority allowing the claim of preemption as made by the respondent no. 5 after reversing the order passed by the respondent no. 4.

It is the case of the petitioners, as averred in the writ application, that the revision application preferred against the order of the appellate authority as abovesaid was dismissed by the Board of Revenue and the writ application preferred by the petitioners against the said order was also dismissed. It is further case of the petitioners that thereafter the special leave to appeal (civil) No. 12831 of 1989 preferred by the petitioners was allowed by the Hon'ble Supreme Court and the matter was remanded back to the Board of Revenue for hearing afresh. It is, however, the case of the petitioners that the Board of Revenue after the remand again dismissed the revision application against which the petitioners preferred C.W.J.C. No. 8316 of 1991. This writ application was disposed of by this Court by order 19.04.1993 and the matter was again remanded back to the Board of Revenue for fresh decision. It is the case of the petitioners that after the remand the Member Board of Revenue has passed the order dated 20.02.1995 (Annexure-1)

upholding the claim of preemption of the respondent no. 5 and affirming the order passed in appeal by the respondent no. 3. The petitioners have impugned these two orders passed by the appellate authority and the revisional authority annexed as annexures -1 and 2 respectively in this writ application.

A counter affidavit has been filed on behalf of the respondent no. 5 contesting the assertions made by the petitioners in the writ application.

Mr. Jha, learned counsel for the petitioners, while criticizing the impugned orders, has mainly made two fold submissions. Firstly, it has been contended that both the appellate authority as well as revisional authority have failed to take into notice that the respondent no. 5 has never made the claim of preemption on the basis of being a raiyat of the land in the vicinage of the land transferred by the sale deed in question and has confined his claim only on the basis of being a co-sharer of the transferred land. It has been canvassed that in the prescribed L.C. Form No.-13 under the Rules, the respondent no. 5 has nowhere raised the claim of preemption by mentioning the adjacent land held by him and this fact is apparent from the order of the land Reforms Deputy Collector-respondent no. 4 where the claim of pre-emption of the petitioners on the basis of adjacency did not find mention or

consideration. It has been next argued that the revisional authority-respondent no. 2 as well as the appellate authority-respondent no. 3 while considering the claim of the respondent no. 5 on the basis of adjacency have further committed gross error of fact and law in allowing the claim on this basis by holding that the plot no. 6091 is the raiyati land of the respondent no. 5 which is adjacent to the compact block of land transferred by the sale deed. The learned counsel in his adroit manner has submitted that both the appellate authority and revisional authority have ignored the entry in the recent survey Khatiyan for the plot no. 6091 which has been recorded as public land with remark column entry showing it to be 'Dih' of Sri Mandan Mishra and also Mahabir Ashathan. It has also been further contended that the transferred lands are not in one compact block and therefore also the claim of preemption of the respondent no. 5 on the basis of being adjacent raiyat plot no. 6091 could not have been allowed. Developing his argument, the learned counsel has further submitted that the right of preemption has been considered by the courts to be a weak right and can be defeated by all legal means and as such when the father of the petitioners, three days before the execution of the sale deed in question, purchased the land in plot no. 6099 he himself became the boundary raiyat of all the plots subject matter of the pre-emption as the said plot no. 6099

is adjacent to all the plots transferred by the sale deed in question. The learned counsel for the petitioners however has fairly accepted that the copy of the L.C. Form No.-13 filed by the respondent no. 5 is not available with the petitioners and therefore cannot be produced before the court to substantiate the submission relating to the limited basis of the claim of preemption made by the respondent no. 5. The learned counsel has also further accepted that even in the supplementary affidavit filed on behalf of the petitioners, there is no material to substantiate this fact.

Mr. Mukund, the learned counsel for the respondent no. 5 in his reply has been emphatic that the right of pre-emption is not a weak right but has been recognized as a statutory right. It has been further contended that though the respondent no. 5 claimed pre-emption over the transferred land in question in the year 1976 which was allowed by the appellate authority by order dated 30.10.1984 but since thereafter he has been harassed upto now by the petitioners who had unsuccessfully approached the higher courts including the Apex Court. The learned counsel has referred to paragraph-4 to the counter affidavit where the details of the litigations have been mentioned in almost a tabular form. It has been contended that though the decree for partition passed in T.S. No. 295 of 1974 on 05.12.1979 has been relied upon by the petitioners to refute the



claim of the petitioners for pre-emption on the basis of being a co-sharer but peculiarly the petitioners also seek to question the validity of the said decree itself by challenging the entitlement of the respondent no. 5 over plot no. 6091 allotted to him by the said decree. It has been further submitted that the respondent no. 5 has made his claim for pre-emption on the basis of being a co-sharer as well as adjoining raiyat and these facts are fully established by the order of the appellate authority who allowed the claim. It has also been argued that the fact of purchase of land of plot no. 6099 by the father of the petitioners by a sale deed said to have been executed prior to the sale deed in question has never been disclosed by the petitioners at any stage of the proceeding and for the first time in this writ application such plea has been taken. Making the frontal attack on the validity of the said sale deed as forged and fabricated, it has been pointed out that when the part of plot no. 6099 has already been purchased by the father of the petitioners on 13.01.1975 from the mother of the respondent no. 5 as claimed, there was no reason to purchase the land of the same plot again on 16.01.1975 from the father of the respondent no. 5. It has also been pointed out by referring to the certified copy of the sale deed dated 13.01.1975 (Annexure-13) that it was presented for registration only on 18.03.1975 much after the presentation of the sale deed under pre-



emption (Annexure-12) which has evidently been done on 16.01.1975. It has however been also submitted that the averments made in paragraph-34 of the writ application with regard to the sale deed dated 13.01.1975 (Annexure-13) itself supports the findings of the courts below that the land subject matter of preemption is in one compact block. It has been lastly submitted that the findings of fact recorded by the appellate authority and revisional authority are not unreasonable or perverse in any manner and those findings are not open to interdiction by this Court in writ jurisdiction.

After consideration of the materials on record as well as the rivalised submissions on behalf of the parties, it is manifest that the seminal issue pertains to the right of pre-emption as envisaged under Section 16 (3) (i) of the Ceiling Act which reads as follows:-

*“16 (3) (i) When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:*

*Provided that no such application shall be*

*entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.”*

There is no dispute to the fact that the respondent no. 5 filed the application claiming preemption within the prescribed period along with the required amount. However, the case of the petitioners is that the respondent no. 5 claimed pre-emption only on the basis of being a co-sharer and he did not make any such claim on the basis of being adjoining raiyat. This fact has been denied by the respondent no. 5 in his counter affidavit. In such a circumstance, it was incumbent upon the petitioners to produce before the court a copy of the L.C. Form No. 13 filed by the respondent no. 5 as prescribed by Rule 19 of the Bihar Land Ceiling Rules 1963 or any other direct evidence to establish that the respondent no. 5 has confined the basis of his claim of preemption as such. However, the learned counsel for the petitioners has placed reliance upon the order dated 30.07.1977 (Annexure-3) passed by the Land Reforms Deputy Collector to corroborate this fact. But the perusal of the said order does not reveal that the respondent no. 5 had confined his claim only on the basis of being a co-sharer of the land transferred. Only because the said authority dismissed the claim of the respondent no. 5 on the finding that he was not a co-sharer of the land transferred



will not by any means lead to the conclusion that there was no other basis of the claim of pre-emption by the respondent no. 5. This submission also gets a jerk from the order by the appellate authority (Annexure-2) and the revisional authority (Annexure-1) where the claim of pre-emption of the respondent no. 5 both as co-sharer and adjoining raiyat was considered and upheld. Even otherwise also the Form L.C. No. 13 as provided in the schedule to Bihar Land Ceiling Rules 1963 does not require mention of the specific basis of the claim of pre-emption. Such a restrictive interpretation is also ruled out in view of a possibility that the claim of pre-emption can be made by a person both as co-sharer raiyat and raiyat of the land adjoining the land transferred, simultaneously. Though a right conferred by a statutory provision can be waived but such a waiver of right must be distinctly explicit from the materials on record. This Court, therefore, is not persuaded to align with the submission on behalf of the petitioners that the consideration of the claim of pre-emption as made by respondent no. 5 on the ground of being adjacent raiyat of the land transferred was legally not permissible.

Now considering the facts of the previous round of litigation between the parties, it is evident from the order dated 21.08.1991(Annexure-7) passed by the respondent no. 2 that the claim of pre-emption by the respondent no. 5 was sustained after



holding him to be a co-sharer of the land transferred. However, the petitioners filed C.W.J.C. No. 8316 of 1991 assailing the said order on various grounds including the ground that there had been partition between the respondent no. 5 and his father (vendor of the petitioners). By order dated 19.04.1993 (Annexure-4), this Court disposed of the said writ application and remanded the matter back to the respondent no. 2 after taking notice of the contentions raised by the petitioners. After the remand, the respondent no. 2 has passed the impugned order dated 20.02.1995 (Annexure -1) recording the categorical finding that the respondent no. 5 has lost his status as co-sharer of the land transferred after passing of the compromise decree in T.S. No. 295 of 1974 and thus discarding the claim of pre-emption of respondent no. 5 on the basis of being co-sharer of the land transferred. The respondent no. 2 has further taken into notice the contents of the compromise decree in T.S. No. 295 of 1974 which was brought on record by the petitioners themselves and has noticed that in the said compromise decree the plot no. 6091 has been allotted in the share of the respondent no. 5 conferring upon him exclusive title and possession over the said plot. After further finding that the land subject matter of pre-emption is in a compact block with plot no. 6091 adjacent to the said block, the respondent no. 2 has allowed the claim of respondent no. 5 for pre-emption on

the basis of being adjoining raiyat.

At this juncture, it would be fruitful to notice that it has been the case of the petitioners themselves that the respondent no. 5 did not remain a co-sharer of the properties sold in favour of the petitioners by his father after partition by the compromise decree in T.S. No. 295 of 1974 between his (respondent no. 5) co-sharers including his father. On the basis of the copy of the said compromise decree as aforenoticed, it has been found by the respondent no. 2 in his order (Annexure-1) that the plot no. 6091 has been allotted in the share of the respondent no. 5 by the said compromise decree. This fact has not been disputed by the petitioners. It is also nowhere the case of the petitioners that the said compromise decree has ever been challenged by any of the parties thereto or by any other person including the petitioners. However, the emphatic submission on behalf of the petitioners in this regard is that this plot no. 6091 does not belong to the family of the respondent no. 5 rather in the survey khatiyan it has been recorded as 'anawad sarvsadharan' having a 'dih' of Sri Mandan Mishra and Mahabir Ashathan and therefore the respondent no. 5 has acquired no right, title or interest over plot no. 6091 on the basis of the compromise decree. In fact, mainly on this basis alone, the petitioners have endeavoured to dislodge the claim of the respondent no. 5 for pre-emption on the ground of being

adjacent raiyat.

The above submission on behalf of the petitioners, however, suffers from apparent fallacies. It is evident that the petitioners have relied upon this compromise decree to dislodge the case of the petitioners to be co-sharer of the lands transferred and have succeeded before the respondent no. 2 on this issue. Now the petitioners have come out with the case that the compromise decree is invalid and not enforceable to the extent whereby the plot no. 6091 has been allotted in the share of the respondent no. 5. Admittedly this compromise decree is still subsisting and has not been challenged before the competent court in accordance with law by any person or parties thereto. As such, it is still binding and enforceable in law. The adjudication of the plea that the plot no. 6091 does not belong to the family of the respondent no. 5 who, therefore, has not acquired any right, title or interest in the said plot by the compromise decree would definitely touch upon the legality and validity of the entire compromise decree as the same cannot be declared invalid in part only because it is demonstrably a decree on the basis of final settlement by the parties to the suit of their disputes with regard to all the suit properties. Even otherwise also, such an adjudication is beyond the ambit and sweep of the limited jurisdiction under Section 16 (3) of the Ceiling Act.



In the aforesaid context, it would further be apposite to note that lands subject matter of the sale under the present pre-emption proceedings were admittedly the suit properties in T.S. No. 295 of 1974 in which the respondent no. 5 along with his father and other co-sharers were parties. The said lands were sold by the father of the respondent no. 5 and purchased by the father of the petitioners by sale deed dated 16.01.1975 during the pendency of the said suit. Being pendente lite purchasers, the father of the petitioners and after him the petitioners would be bound by the decree passed in the said T.S. No. 295 of 1974. The nature of the decree being a compromise decree would not make any difference in view of the dictum by the Constitution Bench in **Sailendra Narayan Vs. The State of Orissa A.I.R. 1956 S.C. 346** that a judgment by consent is as effective as estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Evincibly therefore, the petitioners having derived title over the suit property through a party to the suit during the pendency of the suit will not be allowed to question the decree passed in the said suit on compromise till the said decree subsists and is not set aside, altered or modified in accordance with law. The conclusion is inevitable that the petitioners cannot be allowed to raise the issue of entitlement of the respondent no. 5 over plot no. 6091 on the basis of the compromise

decree in T.S. No. 295 of 1974 in the present proceeding for pre-emption.

The revisional authority as well as the appellate authority both have concurrently found that the lands subject matter of pre-emption are in a compact block and plot no. 6091 is adjacent to the said plot. In this regard, the learned counsel for the petitioners, by referring to the averments in the writ application, has emphasized that the lands purchased by the petitioners are not in a compact block and the finding in this regard has been recorded on surmises and conjectures. However, the statement of the petitioners in paragraph 34 of the writ application belies this stand where it has been claimed that by purchase of land in plot no. 6099 three days before the sale deed under pre-emption, the father of the petitioners himself became the boundary raiyat of all the plots. It would be relevant to notice the statement made in paragraph-34 of the writ application as follows:-

*“34.....That one another important fact of this case is that the father of the petitioners purchased plot no. 6099 (new plot 8031) on 13.01.75 i.e., three days before the Kebala, as contained in Annexure-12, and became the boundary raiyat of all the plots which are the subject matter of present case.....”*

This statement, thus, clearly demolishes the plea of the

petitioners that the lands under preemption are not in one block. There is also no explanation on behalf of the petitioners as to why the fact of the sale deed dated 13.01.1975 has not been disclosed in any proceeding prior to this writ application by the petitioners even when the claim of pre-emption was keenly contested. There is also no statement relating to the date of completion of the registration of the said sale deed dated 13.01.1975 which appears to have been presented for registration on 18.03.1975. There is also no explanation as to why the petitioners' father purchased the land of plot no. 6099 by sale deed dated 13.01.1975 from the mother of the respondent no. 5 and just three days after he further purchased the land of the same plot no. 6099 on 16.01.1975 from the father of the respondent no. 5 and how these two vendors within a span of three days became separately entitled to transfer the land of plot no. 6099. Though the respondent no. 5, in the counter affidavit by raising the above pleas, has questioned the validity of this sale deed but this Court, however, refrains from going into the question of the legality and validity of the sale deed dated 13.01.1975 in the present writ application and rejects the case of the petitioners in this regard only on the basis that this issue involves determination of a disputed question of fact which has been raised for the first time before this Court in this writ application.

The submission on behalf of the petitioners that the right of pre-emption is a weak right has also no substance in view of the Constitution Bench decision in the case of **Shyam Sunder Vs. Ram Kumar, 2001 (8) SCC 24** where their Lordship have ruled as follows:-

“17.....  
.....  
.....  
*In changed circumstances, the right of pre-emption may be called outmoded, but so long it is statutorily recognized, it has to be given the same treatment as any other law deserves.*  
.....  
.....”

For the aforesaid reasons and discussions, this Court comes to the conclusion that the impugned orders (Annexure-1 and 2) do not suffer from any illegality or material irregularity and do not warrant any interference by this Court in writ jurisdiction.

The writ application is, accordingly, dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

Devendra/-

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(V. Nath, J)