

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1169 of 2010

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1. Deo Kishore Sah S/O Shri Banarsi Prasad Sah R/O Vill.- Bhawanipur Rajdham, P.S.- Bhawanipur In The District Of Purnea
 2. Jitendra Kumar Sah S/O Shri Banarsi Prasad Sah R/O Vill.- Bhawanipur Rajdham, P.S.- Bhawanipur In The District Of Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Purnea Division, Purnea
3. The Additional Collector, Purnea
4. The Deputy Collector, Land Reforms, Dhamdaha, Purnea
5. Shankar Prasad Gupta S/O Late Rameshwar Prasad Gupta, (expunged vide order dated 27.08.2015 and substituted by his following heirs and legal representatives) :
 - 5(i) Most. Kiran Devi, wife of Late Shankar Prasad Gupta
 - 5(ii) Rajesh Kumar Gupta
 - 5(iii) Bharti Devi
 - 5(iv) Mukesh Kumar Gupta
 - 5(v) Akhilesh Kumar Gupta
 - (vi) Prayash Kumar, all are son and daughters of late Shankar Prasad Gupta, all R/O Vill.- Bhawanipur, Rajdham, P.S.- Bhawanipur in the District Of Purnea
6. Usha Mishra W/O Late Paras Nath Mishra, R/O Vill.- Bhawanipur, Rajdham, P.S.- Bhawanipur in the District Of Purnea
7. Rajkumar Mishra S/O Late Paras Nath Mishra, R/O Vill.- Bhawanipur, Rajdham, P.S.- Bhawanipur in the District Of Purnea
8. Sanjeev Kumar Mishra S/O Paras Nath Mishra, R/O Vill.- Bhawanipur, Rajdham, P.S.- Bhawanipur in the District Of Purnea
9. Sakesh Kumar Mishra S/O Paras Nath Mishra, R/O Vill.- Bhawanipur, Rajdham, P.S.- Bhawanipur in the District Of Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh
Mr. Rajnish Kumar
For the Respondent No.1 to 4: Mr. Rajesh Kumar, AC to G.P. 10
For the Respondent No.5 : Mr. Anil Kr. Rai
Mr. Abhishek

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 18-05-2016

Heard the parties.

2. The present writ petition arises out of two pre-emption proceedings 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').

3. The petitioners are the pre-emptors with respect to vended plot no. 1759, total area being 58 decimals situate at village Bhawanipur Rajdham, P.S.:- Bhawanipur, District Purnea (in short lands in question). The original respondent no.5-Shankar Prasad Gupta, who is now dead and has been substituted by his heirs and legal representatives vide order dated 27.8.2015, was the purchaser of the aforesaid vended plot through two sale deeds dated 04.11.2003 i.e. one for 28 decimals and other for 30 decimals. One Paras Nath Mishra, whose heirs are impleaded as respondent no. 6 to 9, was the vendor of the lands in question in favour of original respondent no.5.

4. The petitioners are aggrieved by two orders dated 23.07.2009 passed separately in Ceiling Revision Case Nos. 14 of 2008-09 and 15 of 2008-09 by the respondent Divisional Commissioner, Purnea, as contained in Annexure-5 series, whereby aforesaid two Ceiling Revision cases filed on behalf of the petitioners have been dismissed and separate two appellate orders, as contained in Annexure-2 series and separate two original orders, as contained in Annexure-1 series, have been affirmed. Evidently, the claims of pre-emption raised on behalf of the petitioners with respect to the lands in question have been rejected by all the three statutory authorities by orders, as contained in Annexure-1 series, 2 series and 5 series respectively.

5. It is not in dispute that original respondent no. 5-Shankar Prasad Gupta purchased the lands in question through two registered sale deeds dated 04.11.2003, one for 28 decimals and other for 30 decimals from vendor Paras Nath Mishra. The petitioners, claiming to be the boundary raiyats of the vended plots, filed two separate applications under Section 16(3) of the Land Ceiling Act,



giving rise to Ceiling Case No. 1 of 2004 and 2 of 2004 in the court of D.C.L.R., Dhamdaha. In the original pre-emption cases filed on behalf of the petitioners, the original vendor Paras Nath Mishra was not impleaded as party. The matter was contested by the purchaser by filing his separate show cause resisting the claims of pre-emption of the petitioners on various grounds. After considering the case of the parties, the claims of pre-emption raised on behalf of the petitioners was rejected by the respondent D.C.L.R., Dhamdaha, Purnia by his separate order dated 21.01.2004 (Annexure-1 series) on three grounds; firstly, the purchaser himself was a boundary raiyat of the vended plot from before. Secondly, the land in question was under mortgage of the purchaser from before and he was coming in possession over the same by virtue of the mortgage deed and thirdly, the vendor- Paras Nath Mishra was a necessary party in the pre-emption case, but he has not been impleaded as a party respondent. Hence, pre-emption cases are maintainable.

6. The petitioners, being aggrieved by the aforesaid two separate orders dated 21.01.2004 (Annexure-1 series), preferred two separate ceiling appeals giving rise to Pre-emption Ceiling Appeal No. 10 of 2004 and Pre-emption Ceiling Appeal No. 11 of 2004. Both the appeals were finally dismissed by separate orders dated 09.08.2006 (Annexure-2 series) and the orders passed by the original authority, as contained in Annexure-1 series, were affirmed. Thereafter, the petitioners, instead of approaching the revisional authority, moved in CWJC No. 13050 of 2006 before this Court, but that writ petition was not entertained by a Bench of this Court by order dated 22.07.2008 (Annexure-4) and the petitioners were relegated to the revisional authority.

7. It appears that during the pendency of the aforesaid writ



petition, vendor Paras Nath Mishra passed away leaving behind his heirs and legal representatives. In view of the aforesaid order dated 22.07.2008 (Annexure-4), the petitioners preferred two separate Ceiling Revision Case Nos. 14 of 2008-09 and 15 of 2008-09 before the Divisional Commissioner, Purnia, but unfortunately, he impleaded deceased Paras Nath Mishra as a party respondent, who had already died, prior to the filing of the aforesaid Ceiling Revision Cases. Subsequently, substitution petition was filed by the petitioners, but that has been rejected on the ground that both revision petitions were filed against a dead person and ultimately, both the ceiling revision applications have been dismissed by the impugned revisional orders dated 23.07.2009 (Annexre-5 series).

8. The learned counsel appearing on behalf of the petitioners submits that the revisional authority ought to have allowed the prayer for substitution and should have decided the matters on merits.

9. The learned counsel appearing on behalf of the substituted heirs and legal representatives of the deceased respondent no.5, on the other hand, submits that very filing of the pre-emption cases by the petitioners before the original authority was defective of serious nature and was, thus, not maintainable, as the vendor was not impleaded as a party respondent. According to him, this goes to the root of the matter, which, now, cannot be cured, and, therefore, the writ petition is liable to be dismissed.

10. After having heard the parties, at one point of time this Court was tentatively inclined to remit the matter back to the revisional authority for deciding the case afresh, but after going through the entire records, this Court finds that very filing of both the pre-emption cases by the petitioners before the respondent D.C.L.R.,

Dhamdaha were incompetent and not maintainable, as, indisputably, the vendor Paras Nath Mishra was not impleaded as a party respondent in both the pre-emption cases. The original authority has rejected the claims of pre-emption of the petitioners on three grounds, as noticed above, particularly on the ground that the purchaser himself was the boundary raiyat of the vended plot and he was coming in possession over the lands in question from before on the ground of the mortgage deed in his favour. The original authority has categorically recorded a finding of facts that the vendor has not been impleaded as party respondent in the pre-emption cases. The orders of original authority have been affirmed by the appellate authority, which finds further affirmation by the revisional authority.

11. It is well settled principles of law that the right of pre-emption is a very weak right, though a statutory right, and it can be defeated by all legitimate means. In the present case, the claims of pre-emption raised on behalf of the petitioners have been rejected by all the three statutory authority vide orders as contained in Annexure- 1 series, 2 series and 5 series respectively. Furthermore, the petitioners ought to have filed two separate writ petitions, but they have filed only one writ petition challenging the two separate orders passed by the original authority, appellate authority as also the revisional authority.

12. For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned orders, as contained in Annexure- 1series, 2 series and 5 series passed by the authorities concerned. The writ petition is devoid of merits and is, accordingly, dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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