

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3639 of 2004

=====

Harbansh Narain Singh			Petitioner/s
Versus			
The State of Bihar & Ors			Respondent/s

=====

with
Civil Writ Jurisdiction Case No.3734 of 2004

=====

Habansh Narain Singh			Petitioner/s
Versus			
The State of Bihar & Ors			Respondent/s

=====

Appearance :
(In CWJC No.3639 of 2004)
For the Petitioner/s : Mr. Gopal Pandey
For the Respondent/s : Mr. S.A.Alam (Sc)C
Mr. Lakshman Lal Pandey
Mr. Ranjan Kumar Dubey
Mr. Ravi Shankar Dwivedi
Mr. Sanjay Kumar Srivastava

(In CWJC No.3734 of 2004)
For the Petitioner/s : Mr. Gopal Pandey
For the Respondent/s : Mr. S.A.Alam (Sc)C
Mr. Lakshman Lal Pandey
Mr. Ranjan Kumar Dubey
Mr. Sanjay Kumar Shrivastava
Mr. Rajiv Shankar Dwivedi

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

- | | | |
|---|------------|--|
| 8 | 18-11-2016 | 1. Heard the learned counsel Mr. Gopal Pandey, for the petitioner and the learned Senior counsel Mr. S.S. Dwedi, learned counsel for the respondent. |
| | | 2. In both the writ application the substitution application is filed for substitution of the legal representatives of the deceased sole petitioner. Heirs have already appeared by filing |

Vakalatnama. Accordingly the substitution applications are allowed and the legal representatives are substituted.

3. This writ application under Article 226 of the Constitution of India has been filed by the purchaser petitioner for setting aside the order dated 10.01.2004, passed by the Additional Member Board of Revenue Bihar Patna in ceiling revision case no. 249 of 2001 whereby the revisional court has set aside the order of the Additional Collector dated 16.1.2001 passed by Additional Collector Saran in ceiling appeal no. 10 of 1998 setting aside the order of LRDC in land ceiling case no. 22 of 1972.

4. The petitioner has purchased 1 Katha $\frac{1}{4}$ dhur land in two plots by registered sale deed dated 20.7.1972. The private respondent then filed pre-emption application under Section 16(3) of the Bihar Land Reforms Fixation of Ceiling Area and Acquisition of Surplus land act 1961. Ultimately the case traveled to the High Court and this High Court in C.W.J.C. No. 12634/12636 of 1992 remanded the matter to LRDC for passing a fresh order after local inspection. It may be mention here that since there was two sale deed, two ceiling case were filed. Thereafter the parties adduced their evidences and the LRDC inspected the spot and then by terms of order dated 29.3.1998 recorded clear finding that in fact on the date of the purchased by the petitioners the suit land was the agricultural land. Against the said order the private respondent filed appeal before the Additional Collector. The Additional Collector by the order dated 16.11.2001 set aside the order of the LRDC. Then, the private respondent filed revision before the Board of Revenue and by order dated 10.01.2004 the Additional Member Board of

Revenue set aside the order of Additional Collector and confirmed the order of the LRDC where it was found that on the date of transfer land were the agricultural land.

5. The learned counsel Mr. Gopal Pandey appearing on behalf of the petitioner submitted that the Additional Collector had made local inspection and had examined many witnesses at the spot who stated that the purchase property is situated within the market and that there were many houses constructed more than 60 years ago by the side of the property purchased by the petitioners. Moreover the petitioner has only purchased 1 Katha $\frac{1}{4}$ land for the purpose of business therefore, the land ceiling act will not apply in the present case but the Member Board of Revenue has wrongly applied the provision under Section 16(3) of the ceiling Act and wrongly held that it is agricultural land. According to the learned counsel because the property purchased is just by the side of market and in the vicinity of the property there are many houses and the purpose for which the property was purchased i.e. business the finding of the revisional court is unsustainable as without considering these matters which was found by the Additional Collector on the basis of the witnesses examined and set aside the order of Additional Collector. The finding of the Additional Collector is based on the examination of witnesses by the Additional Collector at the spot.

The learned counsel relied upon the decision of this court

(1) Jagarnath Sah Vs. State of Bihar 2008 (1) PLJR 142

(2) 2011 (1) PLJR 799 Gauri Shankar Prasad Singh Vs.

State of Bihar.

(3) 1971 BLJR 974 Kamal Kant Vs. Bal Govind Sah.



6. On the other hand the learned Senior counsel Mr. S.S. Dwedi appearing on behalf of the respondent submitted that the order passed by the Additional Collector is without jurisdiction. The High Court while remanding the matter by LRDC the High Court directed to LRDC to make a spot inspection and the LRDC made spot inspection. There is no provision in the act i.e. Bihar Land Reforms Fixation of Ceiling Area and Acquisition of Surplus Land Act 1961 for spot inspection by the Appellate Authority and examine independent witnesses without giving opportunity to other side for cross-examining the witnesses. The Additional Collector recorded a finding merely on the basis of witnesses which he had examined which were never brought on record and no opportunity was granted to cross-examine the witnesses. More over the finding of the Additional Collector regarding the nature of the land purchased is on the date when he inspected the spot. The nature of the land is to be find out on the date when the lands were purchased and i.e. the point which was formulated by LRDC and LRDC on the basis of materials available on record recorded a clear finding that on the date of the purchased i.e. in the year 1972 the property was the agricultural land. During the pendency of the pre-emption case just after purchase the petitioner started making construction therefore, the pre-emptor filed injunction application in-forming the authority to the effect that the purchaser is trying to change the nature of the suit. And subsequently he was able to construct the shop premises. The learned senior counsel submitted that the order passed by the appellate authority is without jurisdiction as such rightly the revisional court has set it aside.

7. It is admitted fact that the purchaser is neither the co



sharer nor adjacent raiyat of the property purchased. Likewise it is admitted fact that the private respondent i.e. the pre-emptor is the co sharer of the suit property and is also adjacent raiyat. The LRDC after making local inspection as directed by the High Court and examining the witnesses and documentary evidences recorded finding that on the date of sale to the petitioner the property was agricultural land. The Appellate Court also held inspection although there is no such provision in the Act that the Appellate Authority should make spot verification of the land and on his personal knowledge he will record independent finding dehors the evidences and materials available on record.

8. From perusal of the order of the Additional Collector it appears that the Additional Collector referred to the statements of various persons to whom he examined personally. Those witnesses were never produced for their examination. Therefore, the statements made by the persons without being any cross-examination by the pre-emptor their statements cannot be read against the pre-emptor. In other words their evidence is inadmissible against the pre-emptor. Now let us consider the decision relied upon petitioner.

2008 (1) PLJR 142 Jagarnath Sah is concerned it may be mention here that there was clear finding by the lower court that the land being a fellow land and it has seized to be a agricultural land. In the present case the finding is contrary. The finding of the LRDC as well as the revisional court is that the property was the agricultural land.

9. So far as the decision relied upon in the case of **2011 (1) PLJR Gauri Shankar Prasad Singh supra** is concerned it may be



mentioned here that the property involved in that case was bhith land which was residential in nature situated in middle of houses on road side. In the present case the finding is that by the back side of the suit property purchased by the petitioner still the land is used as agricultural land. LRDC as well as the revisional court considered various sale deeds which were executed by the land holders in the year 1976 up to 1980. In all the sale deeds the suit property has been described as agricultural land and these sale deeds of the year 1976 and on 1980 are subsequent to the sale deed of the present petitioner. In the sale deed of the petitioner also the description is agricultural land.

10. So far the Division Bench decision in the case of **Kamla Kant Goswami Vs. Bal Gobind Sah and others 1971 BLJR** is concerned it may be mention here that in that case it was established before the court below that the transferred land is a very small plot located in a bazaar area on which a residential house stands and in which respondent no.1 has been living as a tenant for a very long number of years and carrying on his business. In the present case the witnesses examined by the petitioner all have stated that the petitioner has shop since last 20 years 21 years or 22 years and that the houses were constructed in the vicinity of the purchased land many years ago. The construction of the house in the vicinity by the other person in other plot will not decisive factor for recording a finding regarding nature of the property. It is not the case that the finding of the courts below are based on no evidence and therefore, it cannot be said that the finding recorded by the LRDC or the revisional court are perverse. The glaring fact is that no where the petitioner made a case that prior to purchase in the year

1972 the nature of the land had already changed from agricultural land to either bhith land or residential land or homestead land etc. The case of the petitioner is that after purchase the nature of the land has been changed.

11. Provision as contained in Section 16 sub Section 3 of the Bihar Land Reforms Fixation of Ceiling Area and Acquisition of Surplus Act, provides that when any transfer of land is made after the commencement of the act to any person other than a co sharer or a raiyat adjoining land, any co sharers of the transferor or any raiyat holding land adjoining the land transfer, shall be entitled within 3 months of the date of registration of the document of transfer, to make an application before collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the sale deed.

12. In view of the provision the question to be decided is on the date of transfer whether suit property was the agricultural land or not. The nature of property will not be dependent on the subsequent development by the purchaser during the pendency of the pre-emption proceeding or the subsequent development of a bazaar near by the purchase property. All these questions i.e. subsequent developments are foreign questions for decision in an application under Section 16(3) of the Land Ceiling Act. The LRDC therefore, on the basis of materials available on record recorded a clear finding that on the date of transfer in the year 1972 the property was agricultural land. The revisional court considered the finding of the appellate court and finding unreliable reversed the finding and affirm the order passed by the LRDC therefore, now this finding regarding the nature of property is pure finding of fact

and has become final.

13. In such view of the matter, when the matter has already been concluded by concurrent finding of fact this court cannot interfere with the finding of fact in exercise of writ jurisdiction under Article 226 of the Constitution of India.

14. Thus, I find no merit in these writ applications and thus are accordingly, dismissed.

(Mungeshwar Sahoo, J)

siddharth/-

U			
---	--	--	--