IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.200 of 2016
IN
Civil Writ Jurisdiction Case No. 10422 of 2003

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1. Prithvi Yadav, Son of Late Nebi Yadav,

2. Baccha Lal Yadav @ Bacchu Lal Yadav, Son of Late Jigeshwar Yadav,

Both Residents of Village - Mirjawa, P.S. - Tribeniganj, District - Supaul.

.... Appellant/s

Versus

1. The State of Bihar

2. The Additional Member, Board of Revenue, Bihar, Patna.

3. The Additional Collector, Supaul.

4. The Sub Divisional Officer, Tribeniganj, Supaul.

5. Upendra Yadav,

6. Bhupendra Yadav,

Both sons of Late Familal Yadav, Residents of Village -Mirjawa, P.S. - Tribeniganj, District - Supaul.

7. Most Kaushalya Devi, Wife of Late Familal Yadav, R/o Village - Mizawa, P.s. - Tribeniganj, District - Supaul.

8. Lakshmi Bhagat, Son of Late Ram Dahin Bhagat, Resident of Village - Thalhagarhia Tola, P.S. - Tribeniganj, District - Supaul.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Binod Kumar Sinha
For the Respondent/s : Mr. RAJEEV KUMAR SINGH- GP2

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 29-11-2017

Heard counsel for the appellants.

The writ application of the private respondents, who were petitioners before the Writ Court, was allowed, the order of the

Additional Member Board of Revenue was set aside who in his revisional capacity had in turn set aside the order of the DCLR as well as the Additional Collector. The issue was a claim for pre-emption. Pre-emption was allowed by the two subordinate courts, but the Additional Member Board of Revenue set aside the concurrent finding on the ground that the mandatory compliance of Rule 19(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was not complied with.

The learned Single Judge taking cue from settled position in law by the Hon'ble Apex Court in the case of Hiralal Agrawal Vs. Rampadarath Singh & Ors. reported in 1968 PLJR 68A as well as the decision of a Division Bench in Mohammad Shafique Ahmad Vs. State of Bihar reported in 1995(1) PLJR 851, held that the view of the Additional Member Board of Revenue was unsustainable because the legal positions with regard to non-compliance have been indicated by the Hon'ble Apex Court and the High Court and consistent view is that such non-compliance will not be mandatory.

Since the decision of the learned Single Judge is based on the settled precedents and ratio on the point of law and that view has not undergone a change since 1968 or 1995 in the two cases taken note of by the learned Single Judge, the decision of the learned Single Judge cannot be said to be erroneous.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
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