

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14087 of 2006

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Most.Sumitra Devi wife of late Madan Prasad Singh, resident of village- Bhusi Chak, P.S. Haveli Kharagpur, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Old Secretariat, Patna, Bihar.
3. The Collector, Munger, District- Munger, Bihar.
4. The Sub-divisional Officer, Kharagpur, District- Munger,Bihar.
5. The Circle Officer, Kharagpur, District- Munger, Bihar.
6. Arjun Prasad Singh s/o late Babu Akshya Singh, resident of village Bhusi Chak,P.S. Haveli Kharagpur, District- Munger.
7. Most. Laxmi Devi w/o late Radha Singh.
8. Ashok Kumar Singh s/o late Radha Singh.
9. Suman Kumar Singh s/o late Radha Singh
- 7 to 9 are resident of Mohalla- Sastri Nagar Munger, P.S. Kotwali, District- Munger.
10. Bhawani Devi w/o late Madan Singh.
11. Madhav Singh s/o late Madan Singh.
12. Murari Singh s/o late Madan Singh.
13. Tripurari Singh s/o late Madan Singh.
14. Bihari Singh s/o late Madan Singh.
15. Narendra Kumar Singh s/o late Krishna Nandan Singh.
- 10 to 15 are resident of Indraksh, P.S. Nayaram Nagar, District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Alok Kumar Sinha and Bhola Kumar
For the State : Mr. M.K.Upadhyay, A.C. to G.P.3
For respondent no.6 : M/s Anish Chandra Sinha and Achal Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 17-04-2017

Heard learned counsel for the petitioner as well as
learned counsel appearing for respondent no.6 and learned counsel
for the State.

2. This writ petition has been preferred for quashing the
order dated 27.09.2006 passed by the Additional Member, Board of



Revenue, Patna,, Bihar in Revision Case No.149 of 2005 by which he affirmed the order dated 06.04.2004 passed by the Collector, Munger in Land Ceiling Appeal No. 3/2001-2002.

3. The fact of the case is that the respondent no.6 filed a petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)Act, 1961, before the competent authority claiming his right of pre-emption in respect of plot no.450 of Khata no. 68 and plot no.448 of Khata no. 69 of village Bhusi Chak, District- Munger. The claim of the respondent no.6 is that he was a boundary raiyat of the aforesaid plots but the aforesaid plots were sold by vendor- Radha Singh and others in favour of the petitioner by a registered sale deed. The claim of the respondent no.6 was turned down by the competent authority i.e. Sub-divisional Officer, Kharagpur passing order dated 23.07.2001, which was challenged before the Collector, Munger in Land Ceiling Case No. 3/2001-2--2, which was allowed by the learned Collector, Munger, vide order dated 06.04.2004 setting aside the order of Sub-divisional Officer, Kharagpur, thereafter, the order of the Collector, Munger was challenged before the Additional Member, Board of Revenue in Revision Case No. 149 of 2005, which was dismissed by the Additional Member, Board of Revenue, which is under challenge before this Court.



4. Learned counsel appearing for the petitioner submits that the private respondent no.6 has no case of pre-emption because he is not a boundary raiyat of the plots, in question. To fortify his contention, he drew my attention towards Annexure 6 series, a map as well as report prepared by Anchal Amin, and submitted that the aforesaid map goes to show that there was a vacant land between the purchased lands of the petitioner as well as land of private respondent no.6. Therefore, the respondent no.6 is not a boundary raiyat of the plots in question. He further submits that now it has already been settled in several judgments that right of pre-emption is a weak right and the claimant of the aforesaid right is bound to prove his case beyond any doubt but in the present case, the private respondent no.6 failed to prove his case and that was the reason, the learned S.D.O., Kharagpur rejected the claim of the petitioner by passing detailed orders. However, the appellate court as well as revisional court failed to look into the fact of the present case in right perspective and that is the reason the appellate court as well as revisional court committed error in passing the orders.

5. On the other hand, learned counsel appearing for private respondent no.6 refutes the aforesaid submissions arguing that the report of the Anchal Amin dated 24.04.2002, which has been annexed at page 63 to this petition, goes to show that at the time of



physical verification, Anchal Amin found the private respondent no.6 as boundary raiyat of the purchased plots and the Anchal Amin has, nowhere, mentioned about the vacant land or any passage between the purchased land as well as land of respondent no.6.

6. Learned counsel appearing for private respondent submits that the learned Additional Member, Board of Revenue has passed a well discussed order and there is nothing on record on the basis of which this Court may interfere into the impugned order.

7. Having heard the contentions of both the parties and having gone through the records, it appears that Anchal Amin has found private respondent no.6 as boundary raiyat of the purchased lands. However, in the sale deed executed by Radha Singh and others in favour of the petitioner it has not been mentioned that the respondent no.6 is a boundary raiyat and in the aforesaid sale deed, in southern side of purchased land, the land of the petitioner was shown but it is admitted position that the petitioner failed to file any sale deed in respect of the lands, which is said to be situated in southern side of disputed lands. Moreover, Anchal Amin has specifically mentioned that in southern side of the disputed lands, there was land of private respondent no.6 and, therefore, it is apparent from the aforesaid fact that private respondent no.6 is a boundary raiyat of the purchased lands. The right of pre-emption has been created in Section



16(3) of the Land Ceiling Act and the aforesaid right is a creation of Statute and, therefore, in respect of Land Ceiling Act it cannot be said that the right of pre-emption is a weak right though the aforesaid right may have a different meaning in respect of personal law and any other law. The object of creation of right of pre-emption in Land Ceiling Act is to prevent fragmentation of the lands and, that is the reason, the statutory right of pre-emption has been created by the Act.

8. From perusal of the impugned order passed by the Additional Member, Board of Revenue it would appear that the Additional Member, Board of Revenue has passed a well discussed order and I do not find any reason to interfere with the impugned order. Accordingly, this writ petition is dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A
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