

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.22819 of 2011

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1. Most. Savitri Devi W/O Late Kishan Mandal  
 2. Bidhan Kumar Mandal S/O Late Kishan Mandal  
 3. Kundan Kumar Mandal S/O Late Kishan Mandal  
 All resident of village Azampur Rangra, Police Station- Rangra, District- Bhagalpur

.... .... Petitioner/s

Versus

1. The State Of Bihar  
 2. The Divisional Commissioner, Bhagalpur  
 3. The Collector, Bhagalpur  
 4. The D.C.L.R., Naugachia, Bhagalpur  
 5. Smt. Rambha Singh W/O Sri Niraj Kumar Singh R/O Village- Madrani, P.O.- Sadhuwa, P.S.- Gopalpur, District- Bhagalpur  
 6. Sri Anuradha Jha S/O Late Tuni Lal Jha R/O Village- Kumodpur, P.O.- Gopalpur, District- Bhagalpur

.... .... Respondent/s

#### Appearance:

For the Petitioner/s : Mr. Md. Najmul Hoda  
 For the State : Mr. Ranjan Kumar, AC to GA 12  
 For respondent no.5 : Mr. A.P.Ambastha  
 For respondent no.6 : Mr. R.K. Chaudhary

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

ORAL JUDGMENT

**Date: 03-04-2017**

1. Reply to the counter affidavit is filed by respondent no.5.

2. Heard the parties and perused the record.

3. Husband of petitioner no.1 filed this writ petition under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 in respect of transfer of the land vide registered sale deed dated 11.07.1984 on the ground of



adjoining raiyat but his claim was rejected by learned D.C.L.R. on the ground that original preemptor failed to comply the rule 19 of the Bihar land Ceiling Rules and purchaser had purchased the lands in question for commercial purpose and not for agricultural purpose. The aforesaid order of learned D.C.L.R. was affirmed by learned Collector, Bhagalpur and thereafter, original preemptor, namely, Vikash Mandal filed Revenue Revision no. 15/2010-11 which was dismissed vide impugned order dated 15.06.2011 against which legal heirs of original preemptor have preferred this writ petition.

4. It is informed on behalf of the opposite party that during the pendency of the aforesaid Revenue Revision no. 15/2010-11, original preemptor, namely, Vikash Mandal died but substitution was not done. The aforesaid submission is refuted by learned counsel appearing for the petitioners submitting the fact that at para 9 of the petition, it has specifically been pleaded that substitution of the deceased Vikash Mandal was done before the Collector, Bhagalpur in Revenue Revision no. 15/2010-11.

5. Learned revisional court dismissed the aforesaid revision on the ground that rule 19 of Bihar Land Ceiling Rule has not been complied in its letter and spirit and land was purchased for commercial purpose.

6. Learned counsel appearing for the petitioners submits



that rule 19 is not mandatory in nature but learned D.C.L.R was under misconception that rule 19 is mandatory provision. He further submits that learned D.C.L.R referred two decisions in support of his findings i.e. PLJR 2005(3) page 352 and AIR 1999 SC 2043 but, as a matter of fact, AIR 1999 SC 2043 is not applicable in the present case as the aforesaid decision relates to Mohammedan Law and not in connection with Bihar Land Ceiling Act. He further submits that so far PLJR 2005(3) page 352 is concerned, no doubt, in the aforesaid decision, a single bench of this court held that rule 19 is mandatory provision but in AIR 1969 SC page 244, it has already been held by the Apex Court of this country as well as in several other decisions that rule 19 is not mandatory provision rather the aforesaid provision is a discretionary provision.

7. In the present case, learned D.C.L.R noticed that proper notice was not given to purchaser under rule 19 prior to making claim of preemption under section 16(3) of Bihar Land Ceiling Act and said notice was given after filing of petition under section 16(3) of the Act. Rule 19(3) of Bihar Land Ceiling Rule, 1963 says that a copy of application shall be sent simultaneously by the applicant to the transferor and the transferee by registered post with due acknowledgement. The purpose of the aforesaid rule is to make vendor and vendee apprised of filing petition of claim under section



16(3) of Bihar Land Ceiling Act and, in my view, failure to comply with the aforesaid specific part of rule 19 does not itself make petition under section 16(3) of the Act infructuous unless vendor and vendee show that non-compliance of part of the aforesaid rule has caused serious prejudice to them and, therefore, in my view, the aforesaid rule is not mandatory in nature and non-compliance of the aforesaid rule itself does not make a ground for rejection of the claim made under section 16(3) of the Ceiling Act.

8. So far as second ground of rejection of claim of the petitioners is concerned, learned D.C.L.R, Bhagalpur, learned Collector, Bhagalpur as well as learned Commissioner, Bhagalpur in their respective impugned orders held that opposite party no. 5 purchased disputed land for commercial purpose but the aforesaid finding has been based only on the basis of pleadings of opposite party no.5. All the three subordinate authorities failed to take note of the contents of the sale deed and did not give any specific finding regarding surroundings of plot in question as well as other circumstances of the case and, therefore, in my view, impugned orders passed by all the three subordinate authorities can not stand in the eye of law and accordingly, order dated 15.06.2011 passed by learned Commissioner, Bhagalpur in Revenue Revision no. 15/2010-11, order dated 17.6.2010 passed by learned Collector, Bhagalpur in



Preemption Appeal no. 25/2006-07 as well as order dated 28.07.2006 passed in pre-emption case no.04 of 2005-06/ 12 of 2006-07 by DCLR, Naugachia are, hereby, quashed and the matter is remitted back to the court of DCLR, Naugachia to make a fresh order after taking the evidence from both sides and after making spot inspection of the plot in question in the light of observations given in this order. Both parties shall be at liberty to raise their points and adduce evidences before learned D.C.L.R, Naugachia in respect of their respective claims.

**(Hemant Kumar Srivastava, J)**

Shahid/-

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