IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14291 of 2008

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Shyam Sundar Yadav Son of Late Lalman Yadav resident of village Mahapur P.S- Barmasia, Jhajha, Dist- Jamui

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Jamui At and District- Jamui
2. The Additional Member, Board of Revenue old Secretariat, Patna
3. The Deputy Collector I/C Land reforms, Jamui At & District Jamui
4. Baldeo Yadav son of Leela Yadav, Resident of village Mahapur, P.O-barmasia, P.S.Jhajha
5. Khubhi Yadav son of Leela Yadav c/o of Balgobind Yadav, Resident of village Chain, P.O Chainvia Jhajha, P.S- Jhajha Dist- Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.C.Sinha
Mr. Prakash Kumar
For the Respondent/s : Mr. Prakash Mahto
For the State : Mr. Rakesh Kuamr Ranjan AC to GA-V

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 21-02-2017

Heard learned counsel for the petitioner, learned counsel for respondent no. 7 as well as learned counsel for the State.

2. Petitioner has challenged the order dated 23.06.2008 passed by the learned Additional Member Board of Revenue in Revision Case No.132 of 2002 by which and whereunder the learned Member Board of Revenue set aside the order dated 31.03.2004 passed by the Collector, Jamui in Ceiling Appeal no. 08 of 2002-2003.

3. Petitioner had purchased plot no. 722 appertaining to

Khata no. 84, measuring an area of 18.5/8 decimals of land, of village Mahapur, P.S- Jhajha, Dist- Jamui from respondent no. 5 through registered sale deed dated 07.04.2001. Respondent no. 4 happens to be brother of vendor respondent no.5 and the respondent no. 4 filed a petition under section 16(3) of Bihar Ceiling Act before DCLR, Jamui claiming himself to be co-sharer and adjoining Raiyat of the purchased land. Learned DCLR, Jamui, inspected the plot and allowed the petition filed by the respondent no. 4, passing the order dated 26.07.2002 in Land Revision Case No. 8 of 2001-2002. The aforesaid order of the DCLR, Jamui, was challenged by the petitioner before the Collector, Jamui, by filing L.C. Appeal No. 8 of 2002-2003, which was allowed vide order dated 31.03.2004 by the learned Collector, Jamui, quashing the aforesaid order of the DCLR, Jamui, on the ground that the petitioner had purchased the aforesaid land for construction of residential house and the nature of the aforesaid land was of homestead land but the petitioner had paid lesser court fee, as a result whereof, the Collector, Jamui directed the DCLR, Jamui to ascertain the dues amount of registry and realize the court fee from the petitioner within a month from the date of the aforesaid order dated 31.03.2004. The petitioner deposited the dues court fee on 21.05.2004 which is evident from Annexure-10 to the writ petition. However, the order dated 31.03.2004 passed by the Collector,Jamui was challenged by the respondent no. 4 before the Board of Revenue by filing Revision Case No. 134 of 2004, which was allowed by the Member Board of Revenue, passing the impugned order dated 23.06.2008.

4. The aforesaid impugned order dated 23.06.2008 passed in Revision Case No. 134 of 2004 goes to show that the learned Member Board of Revenue determined the nature of land on the basis of contents of the sale deed in question as well as the report dated 30.11.2001 submitted by the DCLR, Jamui. Moreover, learned Member Board of Revenue also noted this fact that the father of the petitioner was adjoining Raiyat of the plots in question. However, learned Member Board of Revenue passed the impugned order in favour of respondent no. 4 taking note of this fact that respondent no. 4 is not only co-sharer but adjoining Raiyat of the plots in question.

5. It is admitted position that near about 37 decimals of land were purchased jointly by respondent no. 4 and 5, who happens to be full brothers. It is also an admitted position that DCLR, Jamui, made physical inspection of the lands in question and submitted his inspection report dated 30.11.2001, which has been brought on the record. The DCLR while making spot inspection found that in more than half portion of the western side of the purchased area, there was crop of Arhar and in remaining part of western side there was house of respondent no.4 and 5 Similarly, the two sides of aforesaid purchased areas, surrounded ,by agricultural land and in northern side of the aforesaid purchased area, there was a passage.

6. The aforesaid fact goes to show that in some portion of plot no.722, there is house of respondent nos. 4 and 5 but the learned Member Board of Revenue failed to take note of the aforesaid fact.

7. It has already been set at rest by several decisions of this Court as well as Apex Court that for deciding the nature of land, the contents of deed is not a sole criterion rather to decide the nature of land, other facts are also relevant.

8. The learned Member Board of Revenue has noticed that in Western portion of the purchased part, there was land of father of the petitioner and so the petitioner shall be treated impliedly as adjoining Raiyat to the aforesaid plot.

9. Learned counsel for the petitioner submits that, as a matter of fact, the petitioner purchased the land for construction of his house and the nature of purchased land has already changed and at the time of purchased of the aforesaid land, the nature of purchased land was homestead but the learned Member Board of Revenue failed to take note of the aforesaid fact. It is further submitted by him that the learned Collector, Jamui, directed the DCLR, Jamui, to ascertain the deficit court fee of sale deed but the DCLR, Jamui did not take any step in the light of the aforesaid direction of the Collector, Jamui, and that was the reason, the petitioner deposited the deficit court fee on 21.05.2004 and, therefore, it cannot be said that it was petitioner failed to deposit the deficit court fee beyond the period of limitation of one month.

10. On the other hand, learned counsel appearing for respondent no. 4 supported the impugned judgment submitting that the deed in question itself is sufficient to prove that the nature of land was agricultural at the time of purchasing the land in question and, moreover, the map of the village, which has been annexed in the counter affidavit, goes to show that the plot no. 722 is situated far away from village and, therefore, the disputed land cannot be used for residential purpose but I am not at all convinced with the aforesaid submissions because it is an admitted position that on the part portion of plot no. 722, the respondent no. 4 has got constructed his house and, therefore, it appears that the petitioner had purchased the land in question for construction of his house. Moreover, learned Member Board of Revenue has admitted in his impugned order that the land of father of the petitioner was adjoining to the purchased land and, therefore, the petitioner also appears to be adjoining Raiyat to the aforesaid plot. If petitioner is also an adjoining Raiyat of the plot in question, then the respondent no. 4 cannot compel to the respondent no. 5 to transfer the land in his favour because it is the owner who will decide to whom the land is to be transferred.

11. On the basis of aforesaid discussions in my view, the learned Member Board of Revenue has committed an error in passing the impugned order dated 23.06.2008 and, accordingly, the impugned order dated 23.06.2008 stands quashed and the order dated 31.03.2005 passed in Appeal No. 8 of 2002-2003 is restored.

12. In the aforesaid manner, this writ petition stands disposed of.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
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