

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.741 of 2015**

**In**

**Civil Writ Jurisdiction Case No.3278 of 2007**

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1. Anita Devi. Widow of Late Suresh Prasad Yadav.
  2. Akhil Kumar @ Akhil Yadav.
  3. Nikhil Kumar @ Nikko Yadav. Both sons of Late Suresh Prasad yadav. All residents of village - Bhawanipur, Police Station - Gopalpur, District - Bhagalpur.
  4. Beauty Kumari @ Beauty Devi. Wife of Pappu Yadav. Resident of village - Nandanpur, Police Station - Baushi, District - Araria.
  5. Bandana Kumari @ Bando Devi. Wife of Kundan Yadav. Resident of Sultanganj, Police Station - Sultanganj, District - Bhagalpur. (4 and 5 daughter of Late Suresh Prasad Yadav.)

... .. Appellants

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Old Secretariat Building at Patna.
3. The Additional Collector Bhagalpur within the District of Bhagalpur.
4. The Deputy Collector Land Reforms at Naugachia, within the District of Bhagalpur.
5. Sikendra Yadav @ Sikandar Yadav. Son of Kamil Yadav. Residents of village - Bhawanipur, Police Station - Gopalpur, District - Bhagalpur.
6. Shri Narayan Pandey. Son of Late Ganesh Pandey. Residents of village - Bhawanipur, Police Station - Gopalpur, District - Bhagalpur.

... .. Respondents

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**Appearance :**

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|---------------------------|---|-------------------------------------------------------------------------|
| For the Appellants        | : | Mr. Yugal Kishor, Senior Advocate<br>Mr. Sunil Kumar Singh, Advocate    |
| For the Respondent State: |   | Mr. Mithilesh Kumar Upadhyay, AC to GP-3                                |
| For the Respondent No.5:  |   | Mr. Arun Prasad Ambastha, Advocate<br>Mr. Brajesh Kumar Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 08-12-2017**

Heard learned senior counsel for the appellants, learned counsel representing the private respondent as well as learned counsel for the State.



The present Letters Patent Appeal arises out of a judgment dated 10.02.2015 passed by a learned single Judge of this Court in C.W.J.C. No. 3278 of 2007 by which the learned single Judge has been pleased to quash the order passed by the Deputy Collector, Land Reforms, Naugachhia, (in short 'DCLR') in Original Case No.13 of 2004-05, whereby the claim of preemption of the boundary raiyat, namely, Suresh Prasad Yadav was allowed. The order of the 'DCLR' was affirmed in appeal by the Additional Collector, Bhagalpur in L.C. Appeal Case No.2 of 2005 as well as by the Additional Member, Board of Revenue, in Revision Case No.285 of 2005, therefore, the subsequent two orders passed in appeal and revision have also been set aside by the learned single Judge.

The reason for setting aside the order passed by the authorities under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act'), as emerging from the impugned order of the learned single Judge is that the authorities under the Act ignored an affidavit filed by the vendor stating therein that prior to execution of the sale deed in favour of the purchaser-private respondent, he had offered the land in question to the preemptor Suresh Prasad Yadav. Reliance in this regard was placed by the



petitioner which has been accepted by the learned single Judge on a judgment of the Hon'ble Apex Court in the case of ***Ram Chhapit Yadav Vs. Addl. Member, Board of Revenue & Ors.***, reported in **BBCJ 1996 SC 1.**

Learned senior counsel representing the appellants, who are legal heirs of the pre-emptor Suresh Prasad Yadav (since deceased), submits that the learned single Judge has relied upon the affidavit dated 09.04.2005, which was claimed to have been filed before the 'DCLR', but in fact the said affidavit was never filed before the 'DCLR', which will be apparent from the certified copy of the order-sheet of the Court of 'DCLR' in Original Case No.13 of 2004-05 available at Annexure-5 to the writ application. The order-sheet of the Court of 'DCLR' would show that the applicant as well as the opposite party No.1 were present on 28.03.2005 when they were heard finally and the order was reserved. Thereafter, the order was delivered on 12.04.2005 by the 'DCLR' allowing the claim of the pre-emptor. In the order-sheet there is no order showing either filing of the affidavit dated 09.04.2005 and/or service of a copy of the said affidavit to the other side. Thus, at the very first instance the reliance placed on the affidavit dated 09.04.2005 would not be correct as it is not



borne out from the records that the said affidavit was ever served or filed before the original authority.

Learned senior counsel further submits that so far as submission of the writ petitioner that he was there on the land as a under raiyat (bataidar) and was also a landless/privileged person, the same has not been accepted by any of the authorities under the Act for the reasons provided in the order passed by the authorities concerned. As regards the claim that he was a bataidar, it has been categorically found that the panchnama, which has been brought on the record before the 'DCLR', was a document prepared by antedating the same showing a date one day just prior to the sale deed. The authorities have correctly held that an under raiyat right cannot be declared by way of a panchnama and if the petitioner was there as an under raiyat there was no occasion for him to purchase the land in question through a sale deed. Moreover, the submission is that even the sale deed in question nowhere contains any stipulation giving any impression that the purchaser was a bataidar and by virtue of the said bataidari rights he has been purchasing any interest of bataidari. It is the case of the preemptors that the sale deed in question is a simple sale deed which nowhere contains any such stipulation.



Learned senior counsel further submits that regarding the claim of the petitioner that he was a landless person or a privileged person the authorities have found that he had not brought any evidence on the record even as to show a *prima-facie* case that he was a landless person. No certificate either from the revenue authorities or even from the concerned raiyat has been brought on record.

On the other hand, learned counsel representing the private respondent submits that the petitioner was there on the land as bataidar and once this fact has been admitted by the vendor though at the appellate stage, the same was liable to be accepted.

Learned counsel further submits that the affidavit dated 09.04.2005 was filed, but a plea in this regard has been categorically taken only at the appellate stage. Reliance has once again been placed on the judgment referred by the learned single Judge in the impugned judgment.

We have considered the rival submissions at the bar and perused the materials available on the record. A perusal of the record would show that a copy of an affidavit dated 09.04.2005 has been enclosed with the writ application, but the certified copy of the order-sheets of the Court of the learned 'DCLR' in the preemption case nowhere talks of filing of such an affidavit. It is



further an admitted position that the copy of the said affidavit which was allegedly filed by the purchaser was not served on the preemptor. These two facts are going a long way to show that the affidavit dated 09.04.2005 was neither served on the other side nor was filed before the 'DCLR'.

The submission of learned counsel for the purchaser that he was a bataidar and a privileged person having no land has not been believed by the authorities below under the Act for the reasons very categorically stated in the impugned orders. The panchnama has been prepared just a day before the date of the sale deed and the authorities have found that if that panchnama was in existence on the date of execution of the sale deed, by a natural corollary some facts which are part of the panchnama must have appeared in the sale deed also, but the sale deed is totally silent as to any bataidari rights of the purchaser. The findings as well as the reasons recorded by the authorities under the Act would lead us to believe what has emerged by way of consideration by those authorities right from the original stage up to the revisional stage of the proceeding. The learned single Judge has allowed the writ application by setting aside those orders of the authorities under the Act under bonafide impression that perhaps the affidavit was brought before the original authority, but we find that the said



affidavit was not before the original authority and a story in this regard has been built up at the later stage.

This being the position, we are of the view that interference with the concurrent finding of facts by the authorities under the Act by the learned single Judge is not well founded. The impugned judgment of the learned single Judge under appeal is, therefore, liable to be set aside. It is accordingly set aside and the appeal is allowed, result thereof the writ application is dismissed.

**(Ajay Kumar Tripathi, J)**

**( Rajeev Ranjan Prasad, J)**

Pawan/-

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