

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2233 of 2015
IN
Civil Writ Jurisdiction Case No. 14217 of 2008**

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1. Kamaljeet Rai
2. Dilram Rai
3. Vinay Kumar Rai 1 to 3 are Sons of Late Sidhnath Rai
4. Bindhyachal Rai Son of Late Dudhnath Rai All are Resident of village - Gaighat,
Police Station - Simari, District - Buxar

.... Appellants

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Additional Collector, Buxar
4. The Land Reforms Deputy Collector, Dumraon
5. Anchal Adhikari, Simari, District Buxar
6. Vindhyachali Devi Wife of Chhote Lal Rai
7. Ramashankar Rai Son of Late Dudhnath Rai Both 6 and 7 are resident of village
- Gaighat, Police Station Simari, P.O. Asha Padri, Sub Division Dumraon, District -
Buxar

.... Respondents

With

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**Letters Patent Appeal No. 2249 of 2015
IN
Civil Writ Jurisdiction Case No. 13980 of 2008**

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1. Kamaljeet Rai
2. Dilram Rai
3. Vinay Kumar Rai 1 to 3 are Sons of Late Sidhnath Rai
4. Bindhyachal Rai, Son of Late Dudhnath Rai All are Resident of Village Gaighat,
Police Station Simari, District Buxar.

.... Appellants

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Buxar.
4. The Land Reforms Deputy Collector, Dumraon,
5. Anchal Adhikari, Simari, District Buxar
6. Kiran Devi, wife of Sri Lal Babu Rai,
7. Ramashankar Rai Son of Late Dudhnath Rai Both 6 to 7 are Resident of Village
Gaighat, Police Station Simari, P.O. Asha Padri, Sub Division Dumraon, District
Buxar.

.... Respondents

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Appearance :

(In LPA No.2233 of 2015)

For the Appellants : Mr. Sarwan Kumar, Senior Advocate
Mr. Dinesh Maharaj, Advocate



For the Respondent State: Mr. Ashok Kumar Gupta, AC to GP-10
(In LPA No.2249 of 2015)
For the Appellants : Mr. Sarwan Kumar, Senior Advocate
Mr. Dinesh Maharaj, Advocate
For the Respondent State: Mr. Dr. A.K. Upadhyaya, SC-2

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 04-02-2017

Both these appeals arise out of the same common order
and are taken up together with the consent of the parties.

Heard counsel for the parties.

I.A. No. 9708 of 2015 in L.P.A. No. 2233 of 2015 and
I.A. No. 9757 of 2015 in L.P.A. No. 2249 of 2015 are rejected,
because nobody could be impleaded at the level of appeal to
overcome one of the grounds for dismissal of the writ applications
i.e. non-impleadment of necessary parties.

Submission of learned senior counsel for the appellants
is that the learned single Judge has committed a patent error of law
by dismissing the writ applications on the ground that Rama Shankar
Rai was not impleaded as a party in both the preemption cases before
the original authority. His submission is that he is not required to do
so and it was the duty of the Collector to issue notice to the
transferor and the transferee and, therefore, the decision of the
learned single Judge to that extent is said to be bad.



There is an obvious infirmity in the submission so made. The transferor and the transferee are necessary parties and they have to be heard and were required to be impleaded in the application, besides the formality, which is required to be carried out by a preemptor in terms of the provisions of Rules of 1963, which had been reproduced in paragraph 8 of the impugned order.

The learned single Judge has taken note of the provisions in paragraph 9 of the said order, which reads as under :

9. From plain reading of Sub-rule (3) of Rule 19 of Rules, 1963, it is apparent that once an application is filed either by co-sharer of transferor, or a raiyat of adjoining plot for transfer of land under Section 16(3) of the Land Ceiling Act in a prescribed Form L.C. 13, then copy of the said application is required to be sent simultaneously by the applicant to the transferor as also the transferee by a registered post with acknowledgement due. Rule 19(4) of the Rules, 1963 mandates that the Collector under the Act shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date fixed, so that the claim of pre-emption raised under Section 16(3) of the Land Ceiling Act is considered and decided. In sub-Rule (3) and Sub-Rule (4) of Rule 19 of the Rules, 1963 the term used is “shall”, which means “must”. Therefore, unless and until the transferor is impleaded as a party in the pre-emption proceeding,



the proceeding cannot effectively proceed in accordance with law. On an examination of the tenor of whole Rule 19 of the Rules, 1963, this Court is of the opinion that the provisions are mandatory in nature and not directory/ optional in nature. Aforesaid conclusions arrived at by this Court finds support from a decision of yet another learned Single Judge of this Court in the case of **Ram Chandra Singh vs. Sub-divisional Officer, Hajipur** [AIR 1989 Patna 50]. Paragraph-13 of the aforesaid judgment would be relevant and is reproduced herein below:-

“From a perusal of the Rule 19 of the Bihar Land Ceiling Rules, it is evident that the notice of the application has to be sent simultaneously to the transferor and the transferee by registered post with A/D by the applicants. In term of Rule 19(4) of the said Rules, the Collector is bound to issue notice to the transferor and give an opportunity of showing cause to the transferor as also the transferee. Rule 19 of the Rules is mandatory in nature and in absence of any notice having been given to the transferor, the entire proceeding becomes vitiated in law”.

In view of the above, the dismissal of the writ applications by the learned single Judge was in order and the impugned order is not required to be interfered with.



Both the appeals stand dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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