

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6967 of 2005

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Madan Rai son of late Haridwar Rai, resident of village Safari P.S-Ekma,P.O-Safari, Dist- Saran

.... Petitioner/s

Versus

1. The Additional Member Board of Revenue, Bihar, Patna
2. The Additional Collector, Saran, Chapra
3. The Deputy Collector, Land Reforms, Sadar, Chapra
4. Smt. Meera Devi w/o of Sri Kandhjee Yadav, resident of village and P.O- Safari, P.S- Ekma, Dist- Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. I.T.GAUR
Mr. Abhishek Kumar Mishra
Mr. S.K.Gandhi
Mr. Subodh Chandra Jha

For the Respondent/s : Mr. S.A.ALAM (SC(C)4)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 23-02-2017

Heard learned counsel for the petitioner as well as learned counsel appearing for the State and learned counsel for the respondent no.4.

2. Petitioner happens to be pre-emptor whereas respondent no. 4 is purchaser. The respondent no. 4 purchased plot no. 1247 of Khata no. 2777 of village Safin through registered sale deed dated 26.03.1999. The sale deed was executed on 06.12.1994 whereas deed was registered on 26.03.1999. The petitioner filed a petition under section 16(3) of Bihar Land Reforms(Fixation of Ceiling Area and



Acquisition of Surplus Land)Act claiming himself to be adjoining Raiyat but his claim was rejected by the DCLR in Pre-emption Case No. 1-99-2000 vide order dated 14.12.1999 against which Ceiling Appeal No. 15/1999 was filed by the petitioner, which was allowed, setting aside the aforesaid order of the DCLR vide order dated 20.06.2002. The Appellate order dated 20.06.2002 was challenged before the Board of Revenue in Pre-emption Revision Case no.152 of 2002 and the Board of Revenue set aside the appellate order passing the impugned order dated 27.12.2004 which is under challenge before this Court.

3. The appellate order dated 20.06.2002 has been annexed to this petition and the aforesaid order goes to show that on the prayer of the petitioner, the Commissioner was appointed to make local inspection and the aforesaid Commissioner submitted his report mentioning that the land in question was surrounded by the residential houses from three sides and a temporary room was also found on the disputed plot. The appellate court refused to believe on the aforesaid report of Commissioner on the ground of its vagueness but the Board of Revenue accepted the aforesaid report of Commissioner mentioning this fact that the report does not appear to be vague and the same gives a clear picture regarding physical position of the disputed plot.



4. Learned counsel appearing for the petitioner submits that the Registered sale deed dated 23.06.1999 goes to show that the petitioner was in possession of northern and southern side of the disputed plot and the petitioner is adjoining Raiyat of the disputed plot. It is further submitted that the recital of the sale deed reveals that the nature of land in question was agricultural land but only to make out her case, the respondent no. 4 claimed before DCLR that she had purchased the aforesaid land for construction of house and during pendency of the lis, she got constructed a temporary room on the disputed plot.

5. On the other hand, learned counsel appearing for the respondent no. 4 submitted that the learned member of Board of Revenue has very clearly observed in the impugned order that the nature of the land was of homestead as the aforesaid land was surrounded by the residences of several persons and, therefore, the aforesaid observation goes to show that the nature of the disputed land had already been changed.

6. No doubt, in sale deed dated 23.06.1999, the nature of the land has been mentioned as agricultural land but only the recital of sale deed is not the sole criterion for deciding the nature of land rather the other circumstance is also relevant to decide the nature of the land. The impugned order goes to show that the land in question has been



surrounded by the residences of several persons and a temporary room was also found on the disputed plot at the time of local inspection. The object of Section 16(iii) of Bihar Ceiling Act is to prevent fragmentation of agricultural lands but when the disputed plot has already been surrounded by the residential houses and at the time of transfer of the disputed plot, the nature of the plot had already been changed, in my view, the provisions of Section 16(iii) of Bihar Ceiling Act could not have been invoked.

7. So far as the genuineness of report of Commissioner is concerned, the same is a question of fact and the revisional authority has already set aside the findings of the appellate authority by passing reasonable order. Therefore; I do not think it proper to interfere with the findings of the revisional court.

8. On the basis of aforesaid discussions, this writ petition stands dismissed.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
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