

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12252 of 2010

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Ramjee Singh S/O Late Mallu Singh R/O Vill.- Chhatauna, P.S.- Kudra, Distt.-
Kaimur (Bhabhua)

.... Petitioner

Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna
3. The District Magistrate, Kaimur at Bhabhua
4. The Deputy Collector, Land Reforms Mohania, Distt.- Kaimur at Bhabhua
5. The Additional Collector, Kaimur at Bhabhua
6. Jagdish @ Jagdish Singh S/O Late Shiv Govind Singh R/O Vill.- Silaudha, P.S.-
Kudra, Distt.- Kaimur at Bhabhua
7. Akshibar Sah S/O Late Bhau Sah R/O Vill.- Katra Kala, P.S.- Mohania, Distt.-
Kaimur at Bhabhua

.... Respondents

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Appearance :

For the Petitioner : Mr. Satish Kumar
For the Respondents : Mr. (SC18)

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

CAV JUDGMENT

Date: 18-07-2017

1. This petition under Article 226 of the Constitution of India has been preferred on behalf of the petitioner, namely, Ramjee Singh for quashing the order dated 07.08.2008 passed by learned Member, Board of Revenue, Bihar, Patna in Board of Revenue Revision Case No. 80 of 2006 by which and whereunder he affirmed the order dated 30.03.2006 passed by Additional Collector, Kaimur at Bhabua in Mutation Appeal No. 21 of 2004-05/ 28 of 2005-06 and also for quashing the above stated order dated 30.03.2006 passed by Additional Collector, Kaimur at Bhabua in above stated Mutation Appeal No. 21 of 2004-05/ 28 of 2005-06 by which and whereunder



he set aside the order dated 06.12.2004 passed by the D.C.L.R. Mohania in Preemption Case No. 03 of 2003-04 and also for holding the order dated 06.12.2004 passed by D.C.L.R. Mohania in Preemption Case No. 03 of 2003-04 as valid and legal.

2. The brief facts of the present case are that respondent no. 6 filed a petition under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the “Act”) before the D.C.L.R. Mohania claiming his preemptory right over 63 decimal of land of survey khata no. 8/chak khata no. 30, survey plot no. 442/chak plot no. 222 of Mauza Lakha Pati District Kaimur on the ground of being adjoining raiyat. The respondent no. 6 deposited the required amount and completed all formalities as prescribed in the law before filing the aforesaid petition. The aforesaid petition filed under Section 16(3) of the Act was rejected by the D.C.L.R. vide order dated 06.12.2004 passed in Preemption Case No. 03 of 2003-04. The aforesaid order of D.C.L.R. was challenged by respondent no. 6 before Additional Collector, Kaimur who, in his turn, set aside the order of D.C.L.R. in Preemption Appeal No. 21 of 2004-05/ 28 of 2005-06 passing impugned order dated 30.03.2006 which was challenged by the petitioner before the Board of Revenue but the learned Additional Member, Board of Revenue by impugned order dated 07.08.2008 affirmed the order of learned Additional Collector in Revision Case



No. 80 of 2006.

3. It is undisputed fact that petitioner purchased the disputed land measuring an area of 63 decimal by registered sale deed dated 24.11.2003 from respondent no. 7. It is also an undisputed fact that total area of disputed plot was 1.14 acre and out of the aforesaid total area, 63 decimal land was only purchased by the petitioner vide registered sale deed dated 24.11.2003 and the remaining area of aforesaid plot was purchased by respondent no. 6 and two others vide registered sale deed dated 15.07.2002 from respondent no. 7 prior to purchase of petitioner. The claim of respondent no. 6 is that he being adjoining raiyat is entitled to seek right of preemption under Section 16(3) of the Act. However, the claim of the respondent no. 6 was rejected by learned D.C.L.R., Mohania on the ground that respondent no. 6 is not an adjoining raiyat of the disputed land and the nature of disputed land was commercial and, therefore, Section 16(3) of the Act was not applicable. The Additional Collector reversed the finding of D.C.L.R. holding that respondent no. 6 is adjoining raiyat of the disputed land and the nature of land was agricultural. The aforesaid finding of Additional Collector was confirmed by the learned Additional Member, Board of Revenue, Bihar, Patna.

4. Learned counsel appearing for the petitioner submitted that admittedly, 51 decimal of chak plot no. 222 was jointly purchased by respondent no. 6 and Raghubansh Singh as well as one other and



Raghubansh Singh is full brother of respondent no. 6 but except respondent no. 6, rest two vendees have not made any claim under Section 16(3) of the Act and, therefore, the petition filed by respondent no. 6 under Section 16(3) of the Act was not maintainable because the respondent no. 6 had no right to make claim alone under Section 16(3) of the Act. He further submitted that the learned Additional Collector as well as learned Additional Member, Board of Revenue failed to take note of this fact that the nature of land had already changed. He further submitted that learned Additional Collector was duty bound to make enquiry before reversing the finding of learned D.C.L.R. on the point of nature of the land but neither learned Additional Collector nor learned Additional Member, Board of Revenue took any pain to make any enquiry regarding the nature of the disputed lands. He further submitted that now, it has already been set at rest that no claim under Section 16(3) of the Act can be entertained in respect of commercial lands and in the present case, it is an admitted position that there was several commercial activities in the vicinity of the disputed plot but both the courts below i.e. learned Additional Collector as well as learned Additional Member, Board of Revenue failed to take note of the aforesaid fact. Continuing his submission, he submitted that petitioner claimed that disputed land was leased out by the petitioner to his brother in law for installation of petrol pump and, therefore, the aforesaid fact clearly



goes to show that lands in question was purchased by the petitioner for commercial purposes but neither Additional Collector nor learned Additional Member, Board of Revenue gave any finding on the aforesaid fact.

5. On the other hand, learned counsel appearing for the respondent no. 6 refuted the above stated submissions arguing that not only learned Additional Collector but also learned Additional Member, Board of Revenue considered and appreciated all pros and cons of the present case and came to conclusion that respondent no. 6 is a boundary raiyat of the lands in question and has right to seek remedy under Section 16(3) of the Act and furthermore, both the above stated courts came to conclusion that the nature of the disputed land was of agricultural land and, therefore, the concurrent findings of both the courts below cannot be disturbed by this court while exercising the writ jurisdiction. He further submitted that even if a land is situated in a market area, then also, Section 16(3) of the Act is applicable unless the land in question is used for commercial purpose. He further submitted that nature of land can only be decided on the basis of evidence adduced by the concerned parties. In support of his contention, he referred the decision of **Chandrika Sah vs. Additional Member, Board of Revenue, Bihar, Patna and Ors.** reported in **1981 PLJR 124** wherein at para-11 of the aforesaid decision his Lordship held as follows:-



“Then remains for consideration the second question as to whether the Act would apply to the land in question which was situated in the Bazar Area. There is no warrant for this proposition that the provisions of the Act would have no application to a land simply because it happens to be situated in a Bazar area. It has been observed by several decisions of this Court that the provisions apply even to a land which happens to be situated within a municipal area. Both the authorities, namely, the Deputy Collector and the Additional Collector, on the evidence adduced by the parties have clearly held that the nature of the land was agricultural. Nothing was shown to me that this finding, in any way, was vitiated. The second point, therefore, also has got no substance.”

6. On the strength of aforesaid decision, learned counsel for respondent no. 6 submitted that Khatiyani of disputed plot clearly goes to show that nature of land was of agricultural land and the nature of disputed land was not of commercial land. He also submitted that right of preemption under the Ceiling Act is a creature of statute and, therefore, the aforesaid right cannot be said a weak right. In support of his contention, he referred the decision of **Suresh Prasad Singh vs. Dulhin Phulkumari Devi and Ors. reported in 2010(2) PLJR (SC) 167.**



7. Having heard the contention of both the parties, I have gone through the record as well as the impugned orders. It is an admitted position that the respondent no. 7 executed registered sale deed dated 15.07.2002 of some portion of the plot in question in favour of respondent no. 6 and three other persons including Raghubansh Singh who happens to be full brother of respondent no. 6. The photostat copy of the aforesaid sale deed has been brought on record as Annexure-A to the counter affidavit. The aforesaid photostat copy of registered sale deed dated 15.07.2002 goes to show that 51 decimal of area of chak plot no. 222 was transferred in favour of the vendees and the aforesaid sale deed contains specific recitation to this effect that out of above stated 51 decimal, 21 decimal land was transferred to Raghubansh Singh and Chhedi Singh whereas 29 decimal of land was transferred to respondent no. 6 and his son. The boundary of both the aforesaid transferred area was given separately. In western boundary of 21 decimal of land transferred to Raghubansh Singh and Chhedi Singh, there was remaining part of khesra no. 222 whereas in eastern boundary of 29 decimal of land transferred to respondent no. 6 and his son, there was remaining part of plot no. 222. So the aforesaid fact goes to show that even after transfer of area of 51 decimal of chak plot no. 222, the area of chak plot no. 222 remained in eastern as well as in western side of aforesaid transferred area of 51 decimal. It is also an undisputed fact that petitioner got



executed registered sale deed dated 24.11.2003 in respect of 63 decimal of remaining land of chak plot no. 222 and in the sale deed dated 24.11.2003, in eastern side of the purchased area, the plot of Raghubansh Singh has been shown but the contents of sale deed dated 15.07.2002 contradicts the boundary given in sale deed dated 24.11.2003 because in sale deed dated 15.07.2002, in western side of purchased plot of Raghubansh Singh the remaining area of khesra no. 222 has been shown whereas in eastern side of purchased area of respondent no. 6, the remaining area of plot no. 222 has been shown and, therefore, the aforesaid fact goes to show that land purchased by the petitioner was situated between the lands of Raghubansh Singh and respondent no. 6 and, therefore, the aforesaid fact clearly goes to show that respondent no. 6 is boundary raiyat of purchased land of petitioner. The learned Additional Collector as well as learned Additional Member, Board of Revenue discussed and appreciated the materials available on the record in respect of the aforesaid fact and there is nothing on the record on the basis of which this court could differ with the findings recorded by Additional Collector as well as learned Additional Member, Board of Revenue, Bihar, Patna.

8. So far as nature of the land is concerned, admittedly, in sale deeds of both the parties, the nature of land was recorded as agricultural land and the documents produced before both the courts below also reveal the same fact. However, the petitioner has claimed



that he purchased the land in question for commercial purposes but unless any commercial activities is done either on the purchased land or in the vicinity of the lands, it cannot be said that nature of land has already been changed. Moreover, both the courts below have held that nature of purchased land was agricultural land and, therefore, this court does not think it fit to interfere into the findings recorded by both the courts below in respect of above stated fact.

9. On the basis of aforesaid discussions, I do not find any ground to interfere into the impugned orders and, accordingly, this writ petition stands dismissed.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	09.02.2017
Uploading Date	18.07.2017
Transmission Date	N.A.

