

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1632 of 2015

In

Civil Writ Jurisdiction Case No.4855 of 1999

-
-
1. Deo Chandra Sahu
 2. Ram Chandra Sahu, Both sons of Late Manjhi Sahu, resident of Village - Salempur, P.S. - Saharghat, District -Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Madhubani, District -Madhubani.
4. The Deputy Collector, Land Reforms, Benipatti Cum S.D.O. BENipatti in the District of Madhubani.
5. Pachkauri Mandal, S/o Late Manchit Mandal, Resident of Village -Salempur, P.S. - District -Madhubani.
6. Baiju Sahu, S/o Late Faudar Sahu,
7. Ram Bhagat Sahu, S/o Late Faudar Sahu, Both No. 6 and 7 are resident of village - Salempur, P.S. - Saharghat, District - Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. H.P.Singh, Senior Advocate Mr. Yogendra Kumar, Advocate Mr. R.N.Rai, Advocate Dr. M.K.Gautam, Advocate
For the Respondent/s	:	Mr. AJAY- GA-5 Mr. Pratik Kumar Sinha, AC to GA-5

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-08-2017

Heard learned senior counsel for the appellants as well as learned counsel for the State.

The appellants in the present case are aggrieved by the judgment dated 09.07.2015 passed by a learned single Judge of this Court in C.W.J.C. No. 4855 of 1999, by which the learned



single Judge has refused to interfere with the order dated 27.03.1999 passed in Board's Case No.79 of 1996 as contained in Annexure-4 to the writ application. In fact, the appellants, who were the writ petitioners, were aggrieved by the order as contained in Annexure-4 to the writ application which was passed by the learned Additional Member, Board of Revenue, Bihar, while exercising the revisional jurisdiction. By the said Annexure-4 to the writ application the revision application was allowed by setting aside the order dated 15.02.1996 passed by the learned Additional Collector, Madhubani, in Ceiling Appeal Case No. 53 of 1994-95. The appellate Court has affirmed the order dated 12.01.1994 passed by the Deputy Collector, Land Reforms-cum-Sub Divisional Officer, Benipatti in Pre-emption Case No.2 of 1991-92.

The grievance of the writ petitioners-appellants before the learned single Judge as well as before this Court is that though it is not in dispute that they happen to be adjoining *raiyyat* of the land in question, the revisional Court set aside the order passed by the appellate authority only for the reason that during pendency of the application under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act') before the Deputy



Collector, Land Reforms-cum-Sub Divisional Officer, the private respondents/purchasers had already constructed a house changing the nature of the land. The revisional Court was of the view that because the present petitioners-appellants had not taken any step to restrain the private respondents from constructing the house on the disputed land and/or no step was taken before the Sub Divisional Officer for delivery of possession in favour of the writ petitioners-appellants, the house having been already constructed thereon, the Deputy Collector, Land Reforms-cum-Sub Divisional Officer, as well as the appellate authority were not justified in allowing the claim of these appellants. The appellants attempted to raise this issue before the learned single Judge relying upon a judgment of the Hon'ble Supreme Court reported in **2010 (2) PLJR (SC) 167 (Suresh Prasad Singh vs. Dulhin Phulkumari Devi & Ors.)**. Reliance was placed on paragraph 13 of the said judgment which the learned single Judge has taken note of and considered while passing the impugned judgment.

The submission of the appellants before the learned single Judge that in any case their claim having sustained as a pre-emptor, the revisional authority was not justified in interfering with the two orders passed by the authorities below, could not find



favour with the learned single Judge for the same reason as was given by the revisional authority.

Now, in appeal before us, once again emphasis of the learned senior counsel is that even though the house has been constructed on the disputed land during the pendency of the application before the Deputy Collector, Land Reforms-cum-Sub Divisional Officer, the claim of the pre-emptor has to be allowed. The submission is that it does not matter whether a house has been constructed on that land and according to him it is the rule of law as appearing from interpretation of Section 16 of the Act which should prevail. Once again, the learned senior counsel has placed reliance upon the judgment referred hereinabove.

On the other hand, learned counsel appearing for the State has supported the judgment of the learned single Judge. According to learned counsel representing the State, the learned single Judge has rightly distinguished the judgment referred on behalf of the writ petitioners-appellants with that of the judgments reported in **2007 (4) BBCJ 519 (*Deo Narain Mandal vs. Ram Chandra Mandal & Ors.*)** as also the judgment reported in **2009 (3) PLJR 833 (*Ramayan Sah vs. The State of Bihar & Ors.*)**.

According to him, the provisions as contained under Section 16(3) of the Act itself provides a remedy under which a pre-



emptor could have filed an application before the Deputy Collector, Land Reforms-cum-Sub Divisional Officer for placing him in possession of the land and/or in any case to stop the purchasers from constructing a house on the land in question and by not doing so, the pre-emptors have allowed the nature of the land to be changed and once the nature of the land has changed and became residential by virtue of the house constructed thereon, the pre-emptors cannot claim the right to get possession of the land and house standing thereon after all these years over two decades by virtue of their claim for pre-emption.

We have considered the submission made at the bar and have also gone through the judgment of the learned single Judge. It appears to this Court that the pre-emptor while exercising his right of pre-emption under Section 16(3) of the Act could not prosecute his application with due diligence and care and even though they had a remedy to stop the purchaser from changing the nature of land, they could not avail that remedy at appropriate stage. As a result of this inaction on the part of the pre-emptor, the purchaser was able to construct a house sometime in the year 1994, which was during the pendency of the application before the Deputy Collector, Land Reforms-cum-Sub Divisional Officer. The learned



single Judge has in the impugned judgment considered this aspect of the matter and has dealt with the same in following words :

“Besides hearing learned co unsel for the parties, I have also perused the materials available on record. Before delving into the matter the court proposes to incorporate the provisions contained in Section 16(3) of the Act, which is quoted hereinbelow:-

“16(3)(i) When any transfer of land is made after the commencement of the Act to any person other than a cosharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession there of shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause (i).

(iii) if the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, rule 34 of the Code of Civil



Procedure, 1908 (V of 1908), shall be, so far as may be, followed.”

On perusal of the provisions contained in Section 16(3) (ii) of the Act, it is evident that the petitioners after filing of the application were having a right to make a prayer for delivery of possession of the land in question. On perusal of the record it is evident that no such step was taken by the petitioners. Meaning thereby, that the petitioners allowed the purchaser / respondent no. 5 to proceed with the peaceful possession over the land in question in his own manner. It is also accepted that during the pendency of the Pre-emption Case building was already constructed which was noticed by the learned D.C.L.R. in its order. From the facts on record it is evident that nature of land had already been changed. Meaning thereby, that the purchased land had now changed its nature from ‘agricultural land’ to ‘residential land’ and as such, the court considers that the learned Additional Member, Board Of Revenue, Bihar has rightly interfered with the matter. So far Suresh Prasad Singh Case (Supra) is concerned, on which heavy reliance was placed by learned senior counsel for the petitioners, it is evident that in the said case total land of 1.30 Acres was involved. Obviously, it was for the agriculture purpose, whereas, in the present case land measuring 5 katha 2 dhurs has been involved. Even in the said case it was not the stand of the purchaser that after purchasing the land any building was constructed, whereas, in the present case after purchase of the land construction



work has taken place and during the pendency of the Pre-emption case itself construction was already completed, which was noticed by the learned D.C.L.R. in its order. Accordingly, the petitioners may not get any advantage from the judgment of the Apex Court reported in 2010 (2) PLJR (SC) 167.”

In view of the reasonings which are available in the impugned judgment of the learned single Judge, we are of the considered opinion that no interference is required by us at the appellate stage to unsettle the position which has settled down for last two decades. We find no illegality and infirmity in the impugned judgment.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.09.2017
Transmission Date	N.A.

