## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1565 of 2015**

**Arising out of**

**Civil Writ Jurisdiction Case No. 8078 of 1998**

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Ram Bahadur Mukhia Son of Late Moti Lal Mukhia Resident of village - Sukhasan Tola, Bhawanipur, Police Station - Shingheshwar, District – Madhepura

(Respondent 3rd set in the Writ Petition)
.... .... Appellant

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Additional Collector, Madhepura
4. The Deputy Collector Land Reforms, Madhepura

(Respondents 1st in the Writ Petition)

5. Suresh Chandra Dubey
6. Umesh Chandra Dubey

Both are Sons of Late Chandrika Dubey resident of village - Rupauli (Sihpur), P.S. Gamhariya, District – Madhepura

(Respondents 2nd set in the Writ Petition)

7. Upendra Yadav
8. Rajendra Yadav
9. Jai Narain Yadav

All are sons of Late Bhagwat Prasad Yadav and are resident of village - Sukhasan Tola, Bhagwanpur, Police Station Singheshwar, District – Madhepura

(Petitioners in the Writ Petition)
.... .... Respondents

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**Appearance:**

For the Appellant/s : Mr. Pramod Mishra, Advocate.

For the Respondent/s : Mr. Ashish Kumar Lal, AC to GA 5.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**
**and**
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 24-08-2017**

Private respondents no. 7, 8 & 9's application for pre-emption was allowed, both by the Deputy Collector Land Reforms and the Additional Collector / Appellate Authority, against which a revision was preferred.

2. Respondent No. 6 in the Writ Application is the appellant before this Court. Since the Writ Application of the private respondents (in this appeal i.e. respondents no. 7, 8 & 9) , who were the petitioners, was allowed setting aside the order of the Additional Member, Board of Revenue in Revision Case No. 416/1993, the appellant assails the order now under Letters Patent.

3. There are concurrent findings of fact by the learned Deputy Collector Land Reforms as well as the Additional Member, Board of Revenue that the present appellant was not the adjoining raiyat, so the concurrent findings became the subject matter of challenge before the Board of Revenue. Earlier an *ex parte* order was passed which was challenged in a Writ Application. Permission was granted to assail the ex parte order. Thereafter, yet another order came to be passed.

4. After hearing the parties in the writ, the learned Single Judge took note of the manner in which the decision of the Additional Member, Board of Revenue fell foul of the law. He relied on an earlier decision rendered by the High Court in the case of **Sunaniya Devi Vs. Additional Member, Board of Revenue**, reported in **AIR 1981 Patna 273**, on the issue of power of revisional authority. Based

on the ratio of the above decision, learned Single Judge came to the conclusion that the Additional Member, Board of Revenue instead of meeting the reasons or grounds assigned by the statutory authorities, under the Ceiling Act, to allow the pre-emption application of the petitioners, allowed the revision application as an original forum. The act of interfering with the order of the statutory authorities was held to be in the teeth of the judicial pronouncement of **Sunaniya Devi** (Supra).

5. The learned Single Judge also took note of the fact that the Deputy Collector, Land Reforms as well as the Appellate Authority did hold that the petitioners fulfilled the requirements of right of pre-emption under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. The concurrent findings being conclusive his action of upsetting the said findings by the revisional authority was contrary to the powers vested to him as a revisional court, was held to be bad and, therefore, the Writ Application was allowed.

6. The settled principle of law in the case of **Sunaniya Devi** (Supra) was the parameter on which the order of the Additional Member, Board of Revenue was judged and since the Additional Member, Board of Revenue had traversed the judicial boundary and the powers vested in him, the decision of the learned Single Judge,

cannot be said to be bad in law.

7. Appeal has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Rajeev Ranjan Prasad, J)**

Dilip, AR

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| AFR/NAFR | NAFR |
| CAV DATE | N/A |
| Uploading Date | 31.08.2017 |
| Transmission Date | N/A |