

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16563 of 2012

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Kalawati Devi W/O Sri Ram Avatar Gupta Resident Of Village- Agarasi Dinara,
P.S- Karahgar, District- Rohtas At Sasaram (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Member, Board Of Revenue, Bihar, Patna.
3. The District Magistrate, Rohtas, Sasaram, District- Rohtas (Bihar)
4. The Deputy Collector Land Reforms, Sasaram, District- Rohtas, (Bihar)
5. Deo Muni Singh S/O Late Hari Singh Resident Of Village- Ghatmapur, P.S- Sasaram, District- Rohtas (Bihar)
6. Dwarka Gosai S/O Late Radha Kishun Gosai Resident Of Village- Khillanganj, P.S- Sasara, District- Rohtas (Bihar)
7. Ganga Sagar Gosai S/O Dwarika Gosai Resident Of Village- Khillanganj, P.S- Sasara, District- Rohtas (Bihar)
8. Ram Pravesh Gosai S/O Dwaria Gosai Resident Of Village- Khillanganj, P.S- Sasara, District- Rohtas (Bihar)
9. Savitri Devi W/O Gulab Chand Resident Of Mohalla- Karansaray, P.O- Sasaram, P.S- Sasaram, District- Rohtas (Bihar)
10. Parwati Devi W/O Sri Bhaiya Lal Resident Of Mohalla- Fazalganj, P.O- Sasaram, P.S- Sasaram, District- Rohtas (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhruv Narayan
Mr. Abhishek Kumar

For the Respondent/s : Mr. Hemendra Prasad
Mr. Jai Prakash Singh

For the State : Mr. Umesh Narayan Dubey AC to G.P-27

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

ORAL JUDGMENT

Date: 24-04-2017

Heard learned counsel for the petitioner and learned A.C.
to G.P.-27 for the State as well as learned counsel for the Private
respondents.

2. The petitioner has preferred this writ petition for setting



aside the sale deed dated 12.03.2010 executed by Sri Pramod Kumar, the then Deputy Collector Land Reforms Rohtas at Sasaram, in favour of respondent no. 5(respondent 2nd set), namely, Deo Muni Singh, in violation of the legal provision contained under Section 16(3) (iii) of the Bihar Land Ceiling Act, 1961.

3. In brief, the fact of the case is that one Jeera Mani Devi purchased the lands in question through two registered sale deeds executed by one Babu Lal Singh and others and got mutated her name in respect of the aforesaid purchased land. The aforesaid purchase was made on 04.12.1990. However, the respondent no.5 claiming himself to be an adjoining Raiyat filed a petition under Section 16(3) (iii) of the Bihar Land Ceiling Act, 1961 before the DCLR, Rohtas at Sasaram (Respondent No.4), claiming her right of preemption over 3 decimal of lands of the purchaser, namely, Jeera Mani Devi. The DCLR, rohtas rejected the aforesaid application of the respondent no. 5 but the aforesaid order of the DCLR, Rohtas at Sasaram (Respondent No.4) was challenged before the appellate court. The appellate court set aside the order of the DCLR, Rohtas at Sasaram (Respondent No.4) and remitted the matter back for passing a fresh order. After remand of the aforesaid matter, the DCLR, Rohtas at Sasaram (Respondent No.4) allowed the claim of the respondent no. 5 and directed the purchaser to execute the sale deed in favour of



respondent no. 5 in respect of the lands purchased by her. It is pertinent to note here that Jeera Mani Devi took the aforesaid matter up to this Court by filing C.W.J.C. Nos.2909 of 2001 and 2637 of 2001 but during the pendency of C.W.J.C. No.2909 of 2001 and C.W.J.C. No. 2637 of 2001, Jeera Mani Devi died and accordingly, the aforesaid two writ applications which had been filed against the order passed in favour of respondent no. 5 in pre-emption case were dismissed as not pressed. However, it is made clear that during pendency of the aforesaid litigation, the original purchaser, namely, Jeera Mani Devi transferred the land in questions to one Savitri Devi and Parwati Devi on 26.06.2000 through registered sale deeds and, subsequently, the aforesaid Savitri Devi and Parwati Devi transferred the aforesaid lands in favour of the petitioner by executing sale deed some time in the year 2000. However, after dismissal of C.W.J.C. No.2909 of 2001 and C.W.J.C. No.2637 of 2001, the respondent no. 5 filed a petition before the D.C.L.R. Rohtas at Sasaram (Respondent No.4) for execution of sale deed in his favour in the light of the provision contained under Section 16(3) (iii) of the Bihar Land Ceiling Act, 1961 and, thereafter, the learned D.C.L.R., Rohtas at Sasaram executed the sale deed in question, in favour of the Respondent No. 5.

4. Learned counsel for the petitioner submits that the learned



D.C.L.R. Rohtas at Sasaram (Respondent No.4) has not complied with the provisions contained under section 16(3) (iii) of the Bihar Land Ceiling Act, 1961 and under Order XXI Rule 34 of Civil Procedure Code. He further submits that no opportunity of hearing was given to the petitioner before execution of sale deed in question.

5. On the other hand, learned counsel appearing for the private respondents submits that, admittedly, the order, passed under section 16(3) (iii) of the Bihar Land Ceiling Act, 1961, was confirmed up to this Court and, furthermore, it is also an admitted position that original purchaser, namely, Jeera Mani Devi, challenged the order passed under section 16(3) of the Bihar Land Ceiling Act, 1961 before this Court by filing CWJC No. 2909 of 2001 and CWJC No. 2637 of 2001 but both the aforesaid writ petitions were dismissed on 05.09.2008 and, after that, the learned DCLR executed the sale deed in question in accordance with law. He further submits that petitioner does not have any locus standi as she purchased the lands after passing of the order dated 05.09.2008 in CWJC No. 2909 of 2001 and CWJC No. 2637 of 2001.

6. Having heard the rival contentions of both the parties, I have gone through the record. The facts of the case are admitted by both the parties and there is no disagreement between the parties in respect of facts of the present case. However, the only grievance of



the petitioner is that before execution of sale deed in question, the procedure as laid down under section 16(3) (iii) of the Bihar Land Ceiling Act, 1961 as well as relevant provision of Civil Procedure Code have not been complied with by the learned D.C.L.R, Rohtas at Sasaram (Respondent No.4).

7. In this connection, perusal of Section 16(3)(iii) of the Bihar Land Ceiling Act, 1961 is relevant which says that 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.

8. A bare perusal of aforesaid provision goes to show that the Collector, if the application is allowed, shall by an order direct the transferee to convey the land in favour of the applicant. However, to comply with the aforesaid provision, there is no need to pass a separate order by the concerned authority because the aforesaid provision is deemed to be complied with after disposal of application filed under Section 16(3) of Bihar Land Ceiling Act, 1961 but the second part of Section 16(3) of Bihar Land Ceiling Act, 1961 casts a duty upon the concerned authority to comply with the provision of



Order XXI Rule 34 of the Civil Procedure Code if the transferee refuses or neglects to follow the direction as given by the concerned authority under Ceiling Act and, therefore, any deviation from the procedure laid down under order XXI Rule 34 of the Civil Procedure Code would be fatal because Order XXI Rule 34 of the Civil Procedure Code says that if decree holder submits a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court, the Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf and, furthermore, the aforesaid provision says that where judgment debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

9. In the present case, a draft was submitted by the respondent no. 5 before the learned D.C.L.R., Rohtas at Sasaram, but it would appear from submission of the parties as well as materials available on the record that no copy of the aforesaid draft was ever served upon petitioner nor any opportunity of hearing was given to her so that she could raise her objection against the draft submitted by the respondent no.5. The requirement of Order XXI Rule 34 of the Civil Procedure Code is not a mere formality rather the aforesaid



provision gives a very valuable right to the judgment debtor and the aforesaid provision also gives an opportunity to the judgment debtor to see the draft and raise his objection, if he thinks fit to do so. The violation of Order XXI Rule 34 shall give complete go by to the sale deed, if it is executed in violation of the aforesaid provision.

10. In course of hearing, learned counsel appearing for the respondent no. 5 raises an objection regarding the locus standi of the petitioner to challenge the execution of sale deed as she was not a party in the petition filed by the respondent no.5 under section 16(3) of Bihar Land Ceiling Act 1961 but I am not at all convinced with the aforesaid submission because, admittedly, original purchaser namely, Jeera Mani Devi transferred the land in question to Savitri Devi and Parwati Devi who sold the land to the petitioner by executing registered sale deed and, therefore, the aforesaid fact goes to show that Savitri Devi and Parwati Devi entered into the sue of original purchaser Jeera Mani Devi and, likewise, petitioner entered into the sue of her vendors, namely, Savitri Devi and Parwati Devi and, therefore, she has same right to challenge the petition filed under section 16(3) of Bihar Land Ceiling Act, 1961 by the Respondent No. 5 as original purchaser of Jeera Mani Devi had. Therefore, the aforesaid contention of learned counsel for the respondent no. 5 is rejected.



11. In view of the aforesaid discussions as well as submissions of the parties, this writ petition is allowed and the sale deed dated 12.03.2010 executed by the Deputy Collector Land Reforms, Rohtas at Sasaram (Respondent No.4) in favour of respondent no. 5 is set aside and the matter is remitted back to DCLR, Rohtas at Sasaram (Respondent No.4), to proceed with the petition filed on behalf of the respondent no. 5 under Section 16(3) (iii) of the Bihar Land Ceiling Act, 1961 for execution of sale deed in his favour in accordance with law, particularly, in the manner as provided under section 16(3) of Bihar Land Ceiling Act, 1961 as well as Order XXI Rule 34 of the Code of Civil Procedure Code and after giving proper opportunity of hearing to the petitioner pass a fresh order in this case in accordance with law.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
Uploading Date	02.05.2017
Transmission Date	02.05.2017

