

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21670 of 2012

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1. Sanjay Kumar Shandilya S/O Sri Raja Ram Shandilya R/O Village- Kab-Rani Talab (Bikram), District- Patna

.... Petitioner/s

Versus

1. The Commissioner, Patna Division, Patna
2. Collector-Cum-District Magistrate, Patna
3. Deputy Collector, Land Reforms, Paliganj, District- Patna
4. Ram Karan Singh S/O Late Indradeo Singh R/O Village- Kab-Rani Talab (Bikram), District- Patna
5. Ram Singari Devi W/O Late Motahal Singh R/O Village- Kab-Rani Talab (Bikram), District- Patna
6. Prabhawati Devi W/O Birendra Singh R/O Village- Kab-Rani Talab (Bikram), District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondents : Mr. S.N.P. Singh, Advocate
Mr. Surendra Prasad Singh, Advocate
For the Respondent/s : Mr. P.K. Verma Aag5

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

4 19-07-2017 Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel appearing for private respondents.

The petitioner has prayed for quashing the order dated 15.05.2012 passed in Land Ceiling Revision Case No. 432 of 2006 by which the learned Commissioner, Patna Division, Patna set aside the order dated 06.10.2016 passed by the learned Collector, Patna in Land Case Appeal No. 4/2002-03.

The facts of the present case lie in a very narrow compass. The petitioner purchased 2 ½ decimal land of Plot No. 2331, 8 ½ decimal land of Plot No. 2339 and 2 decimal land of Plot No. 2336 of village Nisharpura, Masourhi, Patna through registered sale deed dated 09.04.2002 from



respondents no. 5 and 6 and on the same date i.e. on 09.04.2002 he also purchased remaining 14 decimal area of aforesaid Plot No. 2336 through registered sale deed from the same vendors i.e. respondents no. 5 and 6.

However, after the aforesaid purchase, the respondent no. 4 filed a petition under Section 16(3) of the Bihar Land Ceiling Act and claimed his right of preemption in respect of 14 decimal lands of Khesara No. 2336 being co-sharer and boundary raiyat of the aforesaid plot. The aforesaid petition of respondent no. 4 was allowed vide order dated 30.08.2002 in Land Case Appeal No. 01/2002-03 treating the respondent no. 2 as co-sharer and boundary raiyat of the aforesaid plot. The order dated 30.08.2002 passed in Land Case Appeal No. 1/2002-03 of D.C.L.R. Paliganj was challenged by the petitioner in Land Case Appeal No. 4/2002-03 which was allowed vide order dated 06.10.2006, by Collector, Patna setting aside the order dated 30.08.2002, passed by D.C.L.R. Paliganj, the order of Collector, Patna was challenged by respondent no. 4 by filing Land Ceiling Revision Case No. 430 of 2006 before Commissioner, Patna who, in turn, passed the impugned order dated 15.05.2012, against which, the present writ petition has been preferred.

Learned counsel for the petitioner submits that it is an admitted position that the lands of Plot No. 2336 were purchased by two separate sale deeds by the petitioner on the same date. Two decimal land of Plot No. 2336 was purchased by the petitioner through first sale deed and remaining area of 14 decimal of the aforesaid plot was purchased by the petitioner through second sale deed on the same date.

He has further submitted that it is also admitted position that respondent no. 4 has claimed his right of preemption in respect of only 14 decimal lands of Plot No. 2336 but admittedly, before laying the claim of



preemption, the petitioner had already become boundary raiyat of 14 decimal area of plot no. 2336 and in several decisions, rendered by this Court, it has already been held that if before making claim of preemption, the purchaser becomes the boundary raiyat of the plot in question, the claim of preemption shall be treated to be extinguished. In support his contention, he relied upon the decision of **Nathuni Mahto Vs. State of Bihar** reported in **2004 (2) PLJR page 334** in which it has been held by the Division Bench of this Court that pre-emptor cannot claim his right of preemption, if before making the aforesaid claim, the purchaser himself becomes boundary raiyat of the plot in question. The aforesaid view of the Division Bench of this Court is based upon another Division Bench judgment reported in **30487 PLJR page 445** and apart from this, some other judgments of the Single Bench of this Court have been referred by the learned counsel for the petitioner.

Learned counsel appearing for private respondent no. 4 submits that the legal position as advanced on behalf of the petitioner cannot be disputed but in the present case, it is apparent from the facts that the petitioner got executed two separate sale deeds with mala fide intention to defeat the right of preemption of O.P. No 4.

Having heard the aforesaid submissions of the parties and went through the record, I find that the factual aspect of the present petition is not in dispute and so far as the legal principle is concerned, the same has already been settled in the case of **Nathuni Mahto (supra)**, and, therefore, in the aforesaid circumstances, there is no option before this court but to set aside the impugned order dated 15.05.2012 passed in Land Ceiling Revision Case No. 432 of 2006 and to restore the order of Collector, Patna passed in Land Case Appeal no. 04/2003.



Accordingly, this writ petition is allowed and the impugned order dated 15.05.2012 passed in Land Ceiling Revision against No. 432/2006 stands quashed and the order dated 06.02.2006 passed by Collector, Patna in Land Case Appeal No. 04/2002-03 is restored.

(Hemant Kumar Srivastava, J)

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