

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1641 of 2013

In

Civil Writ Jurisdiction Case No. 5600 of 2004

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1. Surendra Nath Tiwary son of Late Pashupati Nath Tiwary, resident of Village: Chainpur (Mubarakpur), Police Station: Siswan, District: Siwan
 2. Harendra Nath Tiwary son of Devnandan Tiwary, resident of Village: Chainpur (Mubarakpur), Police Station: Siswan, District: Siwan

.... Appellant/s

Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna
3. The Collector, Siwan
4. The Deputy Collector Land Reforms, Siwan
5. Dev Kumar Devrishi Son of Late Gana Harijan Resident of Village: Mubarakpur, P.S. Siswan, District: Siwan
6. Raj Kumar Raj Rajrishi Son of Late Gana Harijan Resident of Village: Mubarakpur, P.S. Siswan, District: Siwan
7. Mahabir Son of Late Jagdeo Singh Resident of Village: Chainpur (Mubarakpur), P.S. Siswan, District: Siwan
8. Chandrika Singh Son of Late Jagdeo Singh Resident of Village: Chainpur (Mubarakpur), P.S. Siswan, District: Siwan

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Ajay Kumar Pandey, Advocate
Mr. Arbind Kumar Singh, Advocate
For the Respondent/s : Mr. Manojeshwar Pd. Sinha, Advocate
Mr. Ratan Kumar Sinha, Advocate
Mr. Madhu Kr. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

2 08-03-2017

The appellants have challenged the order, dated 16.09.2013 passed by the learned Single Judge in the writ application filed by them which has been dismissed without granting any relief.



The writ application was filed assailing the decision of the Additional Member, Board of Revenue in Case No. 227 of 2000, which vide order, dated 22.11.2003 rejected the claim of preemption demanded by the appellants on the ground that the purchase of 5 Kathas and 13 Dhurs of land of Khata No. 333 appertaining to Plot No. 2811 was for homestead purpose and was not a land which could be really used for the purpose of agriculture and consolidation.

The learned Single Judge after going through the order of the Member, Board of Revenue and taking into consideration the principles which have been laid down with regard to such land and purchase for homestead purposes on principles emerging from a Full Bench decision, a Division Bench decision and reached a conclusion that preemption should not be allowed as a matter of course merely at the asking when the object behind the right of preemption for consolidation of land holding and fragmentation thereof was not being achieved.

Submission of the counsel for the appellant that an error had been committed by the learned Single Judge by taking recourse to the principles and also giving a finding that the purchaser was landless is misplaced because an affidavit had also been filed before the subordinate authorities indicating the kind of



land which was held by the purchaser or the family.

Counsel representing the private respondents submits that the affidavit is not worth the piece of paper on which it has been sworn and filed and because no details with regard to the location or identity of the plots have been given and mere plot numbers and details had been filled only to create a prejudice.

Be that as it may, the finding being what they are and keeping in mind the size of the plot of land which was purchased, it cannot be said that it was not for the purpose of homestead.

The appeal fails. No interference is warranted with the order of the learned Single Judge. Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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