

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7905 of 1996

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Ram Das Singh son of Surji Singh, resident of Village-Kharokhar, Police
Station-Rafiganj, District-Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Additional Member, Board of Revenue, Bihar, Patna
 3. The Additional Collector, Aurangabad
 4. The Deputy Collector Land Reforms, Aurangabad
 5. Lakhan Mistry son of Tulsi Mistry
 6. Ram Raj Singh son of Late Krishna Kumar Singh
 7. Most. Ajar Kuer widow of Dhanraj Singh
 8. Brij Raj Singh son of Late Dhanraj Singh
 9. Bishwa Raj Singh son of Late Dhanraj Singh
- Respondent Nos.5 to 9 are residents of Village-Kharokhar, P.S.-
Rafiganj, District-Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jharkhandi Upadhyay
Mr. Rajesh Singh
For the Respondent/s : Mr. H.P.Singh (Sc)
Mr. Giridhar Mishra
Mr. Ram Hriday Prasad

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

12 13-04-2018 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondents.

The petitioner filed this writ petition to quash the order
dated 27.04.1996 passed by Additional Member, Board of
Revenue in Case No.407 of 1994(Annexure 4).

The petitioner is the pre-emptor. Respondent No.5,
Lakhan Mistry purchased 8 decimals of land of Plot No.577,
Khata No.18 from respondent Nos.6 to 9 by registered sale deed
dated 22.07.1987. The petitioner filed pre-emption case that the



petitioner is the adjoining raiyat of the purchased land of respondent No.5. The Deputy Collector, Land Reforms allowed the pre-emption case holding that the land is recorded in the record of rights as *kast nagadi* and the same is agricultural land. The respondent No.5 preferred appeal before the Additional Collector. The Additional Collector also dismissed the appeal holding the land as a piece of agricultural land of course situated and bounded by the houses from two sides. The petitioner preferred revision and the Additional Member, Board of Revenue vide his order dated 27.04.1996 held that the land is mentioned as homestead in the consolidation survey records. From the two sides of the land houses of the pre-emptor and one Ram Naresh Singh are situated and from one side there is a village road.

The learned counsel for the petitioner submits that Additional Member earlier allowed the appeal against which the petitioner filed revision before the Additional member, Board of Revenue. The Additional Member, Board of Revenue set aside the order of the appellate court and remitted the case to the Additional Collector, Aurangabad with a direction that let spot inspection be made. It is further submitted that spot inspection as contained in Annexure 3 shows that the land is agricultural land. Thus, the order of the Additional Member, Board of Revenue(Annexure 4)



is illegal but from perusal of the report made by the Additional Collector(Annexure 3) on 02.08.1994, it appears that in presence of the pre-emptor, the inspection was made. The disputed land was vacant land at the time of inspection. In the western side of the aforesaid land, there was a village road. Adjacent to the aforesaid road, Plot No.578 is situated on which the house of pre-emptor, Ram Das Singh was standing. In the eastern side, there was Plot No.832/1254 on which maize crop was standing but in the southern side, house of Ram Naresh Singh was standing and in the northern side, the house of Anup Narain Singh was standing.

From perusal of the report, it appears that disputed land for which the petitioner seeks pre-emption is bounded by the house from three sides. The consolidation record of rights, as recorded by learned Additional Member, Board of Revenue, it appears that the nature of the land is homestead. Therefore, I find that the learned Additional Member has rightly held that no pre-emption with regard to homestead land is maintainable. The right of pre-emption itself is a very weak right and, therefore, I find no illegality in the order.

Accordingly, this writ petition is dismissed.

Saurabh/-

(Prabhat Kumar Jha, J)

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