

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1513 of 2015

In
Civil Writ Jurisdiction Case No.218 of 1995

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Kameshwar Singh S/o Late Kodai Singh Resident of Village Narha, P.S. Bathnaha, District Sitamarhi.

... .. Appellant

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Sitamarhi, District Sitamarhi.
4. Kapildeo Singh S/o Late Deep Singh Resident of Village Narha, P.S. bathnaha, District Sitamarhi.
5. Upendra Prasad Yadav S/o Harwansh Rai
6. Ravindra Prasad Yadav S/o Harwansh Rai
7. Birendra Prasad Yadav S/o Harwansh Rai All Serial 5 to 7 are Resident of Village Narha, P.S. Bathnaha, District Sitamarhi.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Durga Nand Jha, Advocate
For the Pvt. Respondents:		Mr. R.C.Sinha, Advocate
		Mr. Shashi Chandra Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 15-02-2018

Heard counsel for the parties.

Since the learned single Judge allowed the writ application of the private respondent Nos. 5 to 7 vide order dated 25.06.2015, the intra-Court appeal has been preferred.

The dispute arose when the private respondent Nos. 5 to 7 purchased a piece and parcel of land of 6.5 decimals through a registered sale-deed dated 20.02.1993, an application for preemption was filed by the present appellant. Initially, the



application for preemption was rejected by the Deputy Collector Land Reforms, Sitamarhi, vide order dated 27.12.1993 holding that since the land in question was conveyed for construction of a house and the remaining portion for ingress and egress from the said plot, preemption could not be allowed. This position is also evident from the deed of sale. However, the appellate authority, Additional Collector, Sitamarhi, set aside the order of the DCLR and the said order was also upheld by the Board of Revenue.

One thing is of significance that the dimension of the land is such that the right of preemption, which was claimed by the appellant, who himself has accepted that he has a dwelling house on the adjoining plot of land, then the object for preemption cannot be for prevention of fragmentation of agricultural land for which the legislation in question is in place. It is a six decimal plot of land. The sale deed itself indicates that it is being purchased for construction of a dwelling house. There are other findings that the land in question in the surrounding area also have dwelling houses in existence so the nature of the land is no longer agricultural and, therefore, the object of preemption was only to add to the dimension of the dwelling residence which the appellant has in possession rather than to prevent fragmentation of agricultural land.



In the totality, therefore, the learned single Judge rightly held that allowing preemption would be inequitable and does not achieve the object and purpose under the legislation.

In addition to that learned counsel for the appellant submits that the learned single Judge has committed serious error by giving a direction for restoration of possession to the purchasers and also issuing a direction for cancellation of the conveyance made in his favour which power the learned single Judge did not have.

In the totality of the circumstances, if the Court feels that the right of preemption was not made out, then the only option left for him was to restore not only the plot of land but also annul the transfer which was made by the officials under the legislation or statute and not by any private authority. Such conveyance of deed is done under the statute and, therefore, a cancellation of preemption right will have a consequence of also cancelling the alienation done under the statute.

The learned single Judge has recorded as such in paragraph 8, which reads as under :

“8. It appears petitioner was dispossessed from the lands-in-question with effect from 24.07.1994 and has remained so during the pendency of this writ application for 22 years, though this Court asked the authorities under order dated 03.02.1995 to ensure that petitioner is not dispossessed from the lands in dispute. Request of Respondent No. 4 to vacate the stay order



was initially dismissed for default under order dated 28.02.1996 and thereafter again under order dated 18.12.1998, yet possession of the petitioner over lands-in-question was not restored.”

In view of the above, we are not inclined to interfere with the order of the learned single Judge. However, a cost of Rs.5,000.00 (Five thousand) imposed upon the preemptor, who is the appellant, is set aside.

Appeal is otherwise dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	16.02.2018
Transmission Date	N/A

