

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8038 of 1992

=====

Kabilash Chaudahry & Ors

.... Petitioner/s

Versus

Mahanth Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ravi Nath Verma
Mr. Raghav Prasad

For the Respondent/s : Mr. R.K.Dubey
Mr. Rakesh Chandra

For the State : Mr. Ashutosh Ranjan
Mr. Binay Kumar Mishra

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

11 06-02-2018

Heard both sides.

The petitioners filed this writ petition for quashing of the order dated 09.07.1983 passed by the D.C.L.R.(Annexure 1) by which the petition filed by respondent No.1, Mahanth Yadav was allowed.

The petitioner further prayed for quashing the order dated 12.09.1989/26.09.1989 passed by Collector and the order dated 26.06.1992 passed by the Additional Member, Board of Revenue, Annexure 3 by which the Collector and the learned Additional Member, Board of Revenue confirmed the order of the Dy. Collector Land Reforms.

The respondent No.1 filed petition that he purchased part land of Khata No.541, R.S.P. No.4918 through two sale deeds in the year 1974 and 1980 and got his name mutated. The



petitioners purchased the land. Petitioners are not co-sharers nor adjoining raiyat of the land. D.C.L.R. vide his order dated 09.07.1983 held that the petitioners-opposite parties were not the adjoining raiyat of the land and applicant-respondent No.1 is the adjoining raiyat and the application for pre-emption was filed in accordance with law. Accordingly, allowed the petition. The Collector and the Additional Member also confirmed the order of the D.C.L.R.

Mr. Raghav Prasad, learned counsel appering on behalf of the petitioners firstly submitted that according to Rule 19(3) of Bihar Land Ceiling Rules, the applicant should have filed application along with the notice to the transferor and transferee by registered post with acknowledgement. The petitioners have taken specific plea before all three courts that the application was not filed after giving notice to the transferor and transferee and this is mandatory provision. Non-compliance of this provision of notice before presenting the application before the D.C.L.R. is fatal but the D.C.L.R. did not consider the fact.

On perusal of the order of D.C.L.R., I find no force in the submission of the learned counsel for the petitioner as the D.C.L.R. has held in his order that applicant before presenting the application issued notice to the transferor and transferee-opposite parties through registered post and the receipt of the same was



attached with the application presented before the D.C.L.R.

Mr. Raghav Prasad, learned counsel for the petitioners further submits that the aim and object of the pre-emption is to prevent fragmentation of the lands and the Act is applicable with regard to agricultural and cultivable land. The land in question is situated by the side of the road. The petitioners have already constructed his house but from the statement made by the petitioners in para 17 of the writ petition itself, it appears that after the order passed by D.C.L.R., the reconveyance deed was executed by the order of the court after dismissal of the appeal preferred by the petitioners and it is submitted that pre-emptors came in possession immediately thereafter. When the land was purchased, the nature of land was cultivable and, therefore, I do not find any force in the submission of the learned counsel for the petitioners. All three courts concluded his finding that land is cultivable and agricultural land and pre-emptor are the adjoining raiyats.

Therefore, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

