

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17599 of 2010

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Makan Kewat @Markandeya Kewat

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dudheshwar Singh

For the Respondent/s : Mr. (Gp15)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

8 16-02-2018 Heard both sides.

The petitioner in this writ petition seeks quashing of the order dated 30.06.2010 passed by the Additional Member, Board of Revenue in Board Revision Case No.97 of 2004 and the order dated 21.08.2001 and 21.02.2004 passed by D.C.L.R. and Additional Collector.

The learned counsel for the petitioner submits that petitioner filed petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as the Ceiling Act) but the D.C.L.R. dismissed the petition of the petitioner on the ground that on the date of application no sale deed was registered and, therefore, the petitioner has got no right of pre-emption. The appellate authority as well as revisional authority also affirmed the aforesaid order.



Learned counsel for the petitioner submits that of course the sale deed was executed and registered later on. The ownership and title shall be deemed to have been transferred to the vendee on the date of execution of the sale deed and not on the date of registration of the sale deed. Therefore, it has illegally been held that since on the date of presentation of the petition under Section 16(3) of the Ceiling Act, the sale deed was not registered and, therefore, the petitioner has got no right of pre-emption. Learned counsel for the petitioner placed his reliance on Division Bench judgment of this court reported in 1993(2) BLJR 1098(Suresh Singh v. The State of Bihar and ors.).

On the other hand, the learned counsel for the respondents submitted that another Division Bench of this court has held that according to the provisions as contained in Section 16(3) of the Ceiling Act, the application for pre-emption must be filed after registration of the sale deed.

Section 16(3)(i) of the Ceiling Act reads as follows:

S.16(3)(i) When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms



and conditions contained in the said deed.

It appears from perusal of the Section 16(3) that the application shall be filed within three months from the date of registration of the document and not from the date of execution of the document. Of course, it is held in Division Bench judgment of this court in the case of Suresh Singh v. The State of Bihar and ors.(1993(2) BLJR 1098) that after registration of the deed, the title and owner shall be transferred to the transferee from the date of execution of the sale deed but it does not say that application under Section 16(3) is maintainable only after execution of the sale deed. The provision specially says that applications shall be made within three months from the date of registration of the document and not from the date of execution of the sale deed. A Division Bench of this court reported in 1993 (2) PLJR 260(Ram Paras Choudhary and Ors. v. The State of Bihar and Ors.) held that before registration of the sale deed, the application is not maintainable.

Having considered the facts aforesaid, I find no merit in this writ petition. Accordingly, this writ petition is dismissed.

(Prabhat Kumar Jha, J)

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