

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.922 of 2015
IN
Civil Writ Jurisdiction Case No. 221 of 2006**

=====

Shyamdeo Singh son of late Deodhari Singh, resident of village Jalalpur Police-
Station Dariyapur Distt. Saran

.... Appellant

Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Additional Collector, Saran, Chapra
4. Sub Divisional Magistrate, Incharge, Deputy Collector, Land Reforms, Sonapur, Saran.
5. Bageshwar Singh son of late Chullan Singh, resident of village Jalalpur Police-
Station Dariyapur District Saran
6. Thakur Pd. Singh S/o Rameshwar Singh resident of village Jalalpur Police-
Station Dariyapur Distt. Saran

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Rakesh Kumar Singh, Adv.
For the Respondent/s : Mr. Rakesh Ranjan, AC to AAG-12
For respondent no.5 : Mr. Ram Kishor Singh, Adv.

=====

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 19-06-2018

Heard Mr. Rakesh Kumar Singh, learned counsel for the
appellant, Mr. Rakesh Ranjan, learned AC to AAG-12, for the State
and Mr. Ram Kishor Singh, learned counsel for the private
respondent.

The appeal was admitted on 1.9.2016 and the notice on
respondent no.6 was issued on 9.2.2018 but as noted earlier, though
notice was validly served, he has not chosen to appear.

This intra-Court appeal arises from a judgment and order



of the learned Single Judge dated 27.1.2015 passed in C.W.J.C.No. 221/2006, whereby the writ petition has been dismissed, thus confirming the order passed by the statutory authorities under the provisions of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Ceiling Act').

The facts are not in dispute and stands noted in the order of the learned Single Judge. The appellant herein as the vendee purchased 2 kathas and 3 dhurs of land bearing Khesara No. 379 of Khata No. 16 of village Jalalpur, P.S. Dariyapur, in the district of Saran vide registered sale deed dated 14.7.2001 executed and registered on the same day. Respondent no.5 filed a statutory application by invoking the provision of Section 16(3) of 'the Ceiling Act' making a claim of pre-emption as against the purchaser which application filed before the Deputy Collector, Land Reforms, Sonapur, Saran. The claim for pre-emption was upheld and the application was allowed vide order passed on 16.11.2001, a copy of which is at Annexure 2 to the writ petition. The Deputy Collector, Land Reforms, upheld the fact that respondent no.5 is boundary raiyat and has also upheld the land as agricultural land attracting the provision of Section 16(3) of 'the Ceiling Act'.

Feeling aggrieved the appellant- writ petitioner preferred



statutory appeal before the Addl. Collector, Mokam (Saran) giving rise to Ceiling Appeal No. 70/2001 which was dismissed vide order passed on 17.10.2002, a copy of which is enclosed at Annexure 4 to the writ petition. Yet not being satisfied that the appellant- writ petitioner moved in revision before the Board of Revenue giving rise to Revision Case No. 286/2002 which was considered and dismissed by the Addl. Member, Board of Revenue vide order passed on 31.5.2005. There being concurrent finding of fact by the statutory authorities as to the right of pre-emption vested in the respondent no.5 as well, to the nature of the land, yet the conclusion so drawn by the statutory authorities did not satisfy the petitioner to result in filing of the writ petition in question giving rise to C.W.J.C.No. 221/2006 and which has been dismissed by the judgment and order impugned, hence, this appeal.

The foundation for the challenge raised by the appellant-writ petitioner as espoused by Mr. Singh, learned counsel, lies in the sale deed. According to learned counsel, the classification of the land as 'dih', means that the land is 'homestead' and not 'agricultural' thus sailing out of the purview of 'the Ceiling Act'. This is the sole ground on which the appellant- writ petitioner has contested the matter before the statutory authorities as well as before the Writ Court.

Learned counsel appearing for the private respondent as



well as the State has contested the position to submit that a passing reference in the sale deed would not override uncontested position appearing on the record of the proceedings.

We have heard learned counsel for the parties and have perused the records.

While there is no contest that respondent no.5 is the boundary raiyat of the appellant and thus was well within his right to pre-empt any purchase by the appellant, the only dispute is regarding the classification of the land which is mentioned as 'dih' in the sale deed according to learned counsel for the appellant. In our opinion even this claim is put at rest by the Khatiyani which refers to the land in question as 'Kast Kayami' which means agricultural land. Neither before the authorities nor before the Writ Court did the petitioner bring any material to contest this position save and except photographs which in our opinion would not be sufficient enough to dislodge the concurrent finding of fact upholding the nature of land as agricultural which finds support from the copy of the Khatiyani placed on record.

Apart from the fact that this Court would not enter into the issue of facts once it stands confirmed at each stage of litigation before the statutory authorities, even the photographs so produced by Mr. Singh to contest the agricultural nature, does not persuade this



Court to take a different view. Reference in this regard is made to a judgment of the Supreme Court reported in (2016)3 SCC 340 (**Management of Narendra and Company Private Ltd. v. Workmen of Narendra & Company**) (paragraph-5) which we are persuaded to take note because this Court is of the view that unless there are substantive material to dislodge an opinion formed, a mere second opinion on an issue would not be sufficient to interfere with such concurrent finding as affirmed by the learned Single Judge. Paragraph 5 of the judgment reads as under:

“5. Once the learned Single Judge having seen the records had come to the conclusion that the industry was not functioning after January 1995, there is no justification in entering a different finding without any further material before the Division Bench. The Appellate Bench ought to have noticed that the statement of MW3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

(Narendra & Co. (P) Ltd. v. Workmen, WP No. 41489 of 2002, decided on 14.3.2008 (KAR))



As we have noted while at each stage of the contest, the right of the respondent no.5 as pre-emptor and the nature of land as agricultural, has been upheld, nothing has been placed by the appellant which would persuade us to form a different view.

For the reasons discussed, we find no merit in this appeal, which is dismissed accordingly. No order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.06.2018
Transmission Date	NA

