

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1471 of 2015

In
Civil Writ Jurisdiction Case No.11174 of 2006

Savitri Devi wife of Laddu Lal Mahto resident of Village - Mathurapur, P.S. & District - Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Addl. Member, Board of Revenue, Bihar, Patna.
3. The Collector, Khagaria.
4. The D.C.L.R., Khagaria.
5. Bhasanand Prasad son of late Ravi Mahto resident of Village - Mathurapur, P.S. & District - Khagaria.
6. Ajay Kumar son of Sri Parmanand Gupta resident of Mohalla - Sanhauli, Ward No. 6 under Khagaria Municipality, P.S. & District - Khagaria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dronacharya Advocate Mr. Arghesh Kumar Advocate
For the Respondent/s	:	Mr. V. N. P. Sinha Sr. Advocate Mr. Yugal Kishore Advocate

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

Date : 16-01-2018

Heard learned counsel for the parties.

2. The appellant was the private-respondent in C.W.J.C. No. 11174 of 2006. She is the purchaser of a land, measuring 11



Kathas, 1 Dhur and 11 Dhurkies, appertaining to Khata No. 377, Khesra No. 121, Mauza – Mathura, District – Khagaria. The sale was effected through a registered sale-deed. After the registration of the sale-deed, the private-respondent no. 5, who was the petitioner in the writ application, filed a petition for pre-emption under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, as in most of the cases of pre-emption the claim for pre-emption was based on the ground that the pre-emptor was an adjoining raiyat of the land, both on the southern and eastern boundary.

3. The D.C.L.R. allowed the pre-emption application on the ground of the pre-emptor being an adjoining raiyat by order, dated 28.11.1995. Appellant, the purchaser, preferred an appeal before the learned Collector, Khagaria, who dismissed the appeal. Therefore, revision was preferred before the Divisional Commissioner, Munger against the order of the Collector. The Divisional Commissioner on 11.10.2002 passed an order of remand, remitting the case back to the D.C.L.R. He also observed that no revision will lie before the Divisional Commissioner. The revision should have been preferred before the Board of Revenue.

4. The pre-emptor, i.e., private-respondent no. 5, filed a writ application, namely, C.W.J.C. No. 715 of 2003. The writ



application was allowed. The order of the Divisional Commissioner was set aside and, therefore, the appellant-purchaser, preferred a revision application before the Additional Member, Board of Revenue, which was registered as Case No. 180 of 2005.

5. One of the primary reasons why the appellant succeeded before the Additional Member, Board of Revenue, was that a plea was taken that the purchaser was a landless person and, therefore, no pre-emption can be claimed against her purchase.

6. Another aspect of significance is that a Pleader Commissioner was appointed at the level of D.C.L.R. and the Pleader Commissioner submitted report that the land in question is located in a populated area, having residential buildings all around and it cannot be said to be fit for the purposes of agriculture. However, the D.C.L.R. primarily went by the fact that the pre-emptor was an adjoining raiyat.

7. All told, the Additional Member, Board of Revenue in absence of any categorical rebuttal or proof as to the plea that the present appellant belonged to landless category and all told she held only about 17 Kathas and 10 Dhurs of land, which is less than one acre therefore, the revision was allowed in favour of the purchaser-the present appellant.



8. The pre-emptor filed the civil writ application, which was heard by the Learned Single Judge and allowed, vide order, dated 22.06.2015. The basic reason on which the Learned Single Judge allowed the writ application is that since the purchaser did not take the plea of being a landless either before the D.C.L.R. or the Collector, therefore, this plea could not have been taken at the stage of revision. The order of the Additional Member, Board of Revenue came to be set aside and so the intra court appeal.

9. The stand of the counsel for the appellant is that the Learned Single Judge seems to have committed an error by getting into the fact that the plea of landlessness was not taken before the two forums, therefore, it could not be allowed to be taken at the stage of revision before the Member, Board of Revenue.

10. In this regard, learned counsel for the appellant placed reliance on one of the earliest decisions of this Court, which is the case of *Kamleshwar Prasad Yadav @ Kamleshwari Yadav Vs. State of Bihar and others, reported in 1986 BLJ 677*. The Division Bench while dealing with the power of the Board of Revenue as a revisional forum had this to say in paragraph 8:

“8. Now, a plain reading of Section 32 of the Act would itself indicate that the stand of the respondents is untenable. This provision gives the widest power to the Board to confirm, modify or set aside the appellate



order of the Collector. In this context, it is crystal clear that the Board is at the apex of hierarchy over the Land Reforms Deputy Collector and the Collector under this Act. Now, once there is a power of the widest amplitude without qualification vested in the Board to either confirm or modify or totally set aside the order of the appellate court, it is patent that it was more than fully authorized to go into the facts and review the findings of fact of the authorities below. This power is indeed conferred by Section 32 on the Board without limitation and in the language of the widest amplitude. What further calls for notice in Section 32 is the fact that the provision mandates that a revision shall lie to the Board of Revenue from any appellate order passed by a Collector, thus giving a vested right to the litigant to approach the Board. It is not merely a revisional power to call for the records but a vested right of the litigant to record to it as well. Again sub-section (2) expressly provides for a hearing of the parties for the purposes of revision. An equal significance is the fact that sub-section (3) empowers the Board to call from the Collector any document or record obviously for its own appraisal thereof.”

11. Drawing from the ratio, the stand of the counsel for the appellant is that the Member, Board of Revenue was not precluded from entertaining such a plea, which was a factual aspect clubbed



with legal aspect and needed to be thrashed out as the final forum in such dispute.

12. Another decision, on which reliance has been placed is a decision in the case of *Jawahar Lal and others Vs. Additional Member, Board of Revenue, Bihar, Patna and others*, reported in 1974 BLJR 20, which is a Division Bench decision. Reference has been made to paragraph nos. 3 and 4 of the said decision, which reads as under:

“3. It has been held by the Supreme Court, in Hiralal Agrawal v. Rampadarath Singh that the right of reconveyance under Sec. 16 of the Act accrues only when the registration of a sale-deed is complete, as required by Secs. 60 and 61 of the Registration Act, and not before. In other words, the right of reconveyance does not accrue before the sale-deed is copied out in the books maintained for the purpose by the registering authority. Following the above decision, the same view has been reiterated by a Bench of this Court, in Kauleshwar Singh v. Parmanand. It may be stated that the same view had been taken in three earlier unreported Bench decisions of this Court, which have been referred to in Kauleshwar Singh’s case. Therefore, there can be no doubt that the application of respondent No. 4 filed before respondent No. 3 was not maintainable and that respondent No. 3 could not have entertained that application, and, consequently the orders passed by him on the 1st of May, 1969 issuing notices to the



petitioners and respondent No. 5 and the final order as contained in annexure “3” allowing the said application were without jurisdiction.

4. It has been contended by Mr. K. D. Chatterji, who has appeared for respondent No. 4, that, as the aforesaid point was not taken in any of the Courts below, the petitioners should not be allowed to raise it for the first time before this Court. It has been stated on affidavit in the writ petition filed before this Court that the point was raised before respondent No. 1. The resolution of respondent No. 1, however, does not show that the point was raised before him, and we will proceed on the assumption that it was not raised there. In our opinion, as a writ of certiorari is sought in this case on the ground of absence of jurisdiction the point urged on behalf of the petitioners can be allowed to be raised for the first time even before this Court. In Halsbury’s Laws of England, Third Edition, Volume 11, at page 75, Article 138 it is stated:

“..... Where certiorari is sought on the ground of absence or excess of jurisdiction, bias by interest, fraud or breach of natural justice, extraneous evidence of these matters will be admissible, and indeed necessary, if they are not apparent on the fact of the record”

In support of this statement of law, the decisions in Rex v. Northumberland Compensation Appeal Tribunal has been



referred to. In that case, Morris, L. J. observed as follows: -

“It is plain that certiorari will not issue as the cloak of an appeal is disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where show “

The observation in the passage quoted above was approved by the Supreme Court in T. C. Basappa v. T. Nagappa.”

13. From what emerges from the ratios of the two Division Bench decisions relied upon by the learned counsel for the appellant, as above, the Learned Single Judge seems to have made an error of judgement by holding that the Additional Member, Board of Revenue could not have gone into the question whether the purchaser was a landless person or that such a plea could not have been allowed to be raised, if not raised either before the D.C.L.R. or the Collector, Khagaria in this regard, merely because such plea was not raised earlier.

14. Since the question of the present purchaser being a landless is also a question of law as to the power to entertain an application u/s 16 (3) of Ceiling Act was integral and keeping in mind the power and the ambit of revisional jurisdiction vested in



the Board of Revenue, the Additional Member, Board of Revenue committed no error by entertaining such a plea and interfering with the order of the D.C.L.R. and the Collector. The Order, dated 22.06.2015 of the Learned Single Judge, therefore, is required to be set aside and is set aside.

Appeal is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.01.2018
Transmission Date	

