IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.943 of 1987

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Smt. Kusum Sharan, wife of Sri Shambhu Sharan, resident of village Bareo, P.S.-Akbarpur, District-Nawadah.

…. …. Purchaser-Petitioner

Versus

1. The Additional Member, Board of Revenue, Bihar, Patna.
2. The Collector, Nawadah.
3. The Deputy Collector Lands Reforms, Nawadah.
4. Jadunandan Prasad son of late Sri Kalicharan Lal, deceased, resident of village Bareo, P.O. Namdarganj, P.S. Akbarpur, Dist. Nawadah.

…. …. Pre-emptor

5. Kisun Singh, son of Daroga Singh, deceased, resident of village Dudhaili, P.S.- Akbarpur, District-Nawadah.

... ... Vendor

…. …. Respondents

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Appearance :

For the Petitioner : Mr. Birendra Kumar Singh, Advocate

For the Respondents : Mr. S.D. Yadav, A.A.G.-9

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-02-2019

This reference arises out of a claim made by the petitioner on the strength of an oral purchase of a very small piece of land measuring 2½ dhurs (0.0104 Acres), the value whereof is stated to be less than Rs. 100/-, for resisting a counter claim of preemption.

The transaction of land in terms of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 read with Section 54 of the Transfer of Property Act, 1882 and Section 18 of the Registration Act, 1908 are the relevant provisions on the strength whereof the correctness of a Division Bench judgment in the case of **Basudeo Rai & Ors. vs. Altan Rai & Ors.** reported in **1984 BBCJ 302** has been doubted.

The petitioner claims his right under an oral purchase in relation to a small piece of land for a sum of Rs. 90/- only. The question is as to whether such an oral sale could be ignored under the provisions of 1961 Act which is a transaction not being a registered document as the sale consideration is less than Rs. 100/-.

The Division Bench in the case of **Basudeo Rai** (supra) held that no transfer by way of sale could be taken cognizance of under the 1961 Act unless such transfer is made through a registered instrument, duly registered under the Indian Registration Act.

One of the decisions that have been cited by the learned Additional Advocate General of Bihar is the case of **Bibi Jubeda Khatoon and Anr. Vs. The State of Bihar & Ors.** reported in **2011 (2) PLJR 216** wherein it was held that an oral gift of land would not amount to a transfer in terms of Section 16 of the 1961 Act.

It is in these circumstances, the Full Bench has been called upon to answer the reference keeping in view the doubt expressed about the correctness of the judgment in the case of **Basudeo Rai** (supra).

To my mind, on a perusal of the aforesaid provisions, the answer to the query would lie in the meaning of the words assigned by the Legislature under the 1961 Act in relation to transfers of land under the 1961 Act. This has to be understood in the light of the fact that under Section 16(2)(iii) of the 1961 Act, transfer of land has further been qualified by the words "in accordance with the provisions of Indian Registration Act". Section 18 of the Indian Registration Act in its turn clearly provides for an option in relation to transactions of tangible immovable property, the worth whereof is less than Rs. 100/- and which clearly indicates that the same does not require any compulsory registration.

On the other hand, the provisions of the 1961 Act, particularly, Section 16(2) (iii) prohibits transfer without the registration of a document. The same provision, however, clarifies that the registration has to be "in accordance with the provisions of the Indian Registration Act, 1908".

The same is capable of being interpreted to mean that in order to constitute a transfer under the 1961 Act, the registration of a document in accordance with the Indian Registration Act is compulsory which therefore necessarily means the execution of a registered document in respect of any transaction irrespective of the value of the property.

On the other hand, it is also evident that under the same provision of the 1961 Act registration is contemplated “in accordance with the provisions of the Indian Registration Act, 1908”. The provisions under the 1961 Act do not specifically provide for the compulsory registration of transfer of land even if it is less than the value of Rs. 100/- because the words “in accordance with” do not appear to eliminate the option as provided for under Section 18 of the Registration Act which is acknowledged in law to be a valid option as existing on date. By acknowledging the process of registration under the Indian Registration Act, 1908 as specified in the 1961 Act, it will not be possible for the Court to eliminate the option and to adopt a restrictive meaning by ignoring the option as engrained in Section 18 of the Act. The option of non-registration of a transaction of less than Rs. 100/- is a legal and valid option and, therefore, to hold that a compulsory registration would be necessary even for the transaction of a land of less than Rs. 100/- would be contrary to the intention of the Legislature. A transfer of land of the value of less than Rs. 100/- is not prohibited under the 1961 Act. Can it therefore be construed that registration of transfer of land of less than Rs. 100/- would also be required for the purpose of the Act?

To my mind, the provisions of Section 16(2)(iii) of the 1961 Act as interpreted in **Basudeo Rai's** case (supra) attempts to disgorge the option of non-registration of transfer of land of the value of less than Rs. 100/- out of Section 18 of the Indian Registration Act, 1908, without there being any express provision therein.

There is a third dimension to the matter, namely, of the sales and transfers being given effect to after the amendment in 1961 Act which was brought about w.e.f. 09.09.1970 and again in the year 1982. The oral sale in the present case is said to have made on 7th March, 1982 for a sum of Rs. 90/- in respect of two and half dhurs of adjoining land and the purchaser was put in possession.

A transfer which is made after the enforcement of the 1961 Act as amended from time to time is to conform to the provisions of Special Act. It cannot therefore be said that transactions which have taken place prior to the enforcement of restrictions contained in Section 16 of the 1961 Act, would be also liable to be ignored, inasmuch as, there was no such restriction under the Indian Registration Act, 1908 which made it permissible to acknowledge a transfer without compulsory registration of land of the value of less than Rs. 100/-. It is only after the enforcement of the restrictive clause in the 1961 Act, which is a Special Act, that the transfers came to be governed only for the purpose of adjudication under the 1961 Act and not otherwise.

To further understand the controversy about the status of a transaction of less than Rs. 100/- , the subject of land reforms is exclusively within the domain of the State Legislature as per Entry 18 of List II under the Seventh Schedule of the Constitution of India. Thus, land reforms is an exclusive subject within the State List but at the same time registration of deeds is contained in Entry 6 of List III of the Seventh Schedule of the Constitution of India, i.e., under the Concurrent List. The Indian Registration Act, 1908 does not contain any amendment in relation to the option of non-registration of a transaction of immovable property of less than Rs. 100/-. In the absence of any such provision, the 1908 Act which is a Central Act will continue to prevail. It is not necessary to read a conflict between Section 16 of the 1961 Act and Section 18 of the 1908 Act inasmuch as Section 16 of the 1961 Act itself utilizes the words "in accordance with provisions of the Registration Act". Thus it incorporates and acknowledges the procedure of the 1908 Act. Harmonizing the two, it can be safely said that so long as the provisions of Section 18 of the 1908 Act are intact, the same being a Central Act would prevail. The State legislature did not amend or introduce any provision in the Registration Act and, therefore, the words "in accordance with the provisions of the Registration Act" were rightly engrained in Section 16 of the 1961 Act. Thus, the provisions of the Indian Registration Act, 1908 would continue to have force which aspect does not appear to have been dealt with appropriately in the case of **Basudeo Rai** (supra).

Having discussed the status of the legislation under the Constitution, namely, the Registration Act 1908 and Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 it would be apt to mention that if the provisions under consideration particularly Section 16(2)(iii) of the 1961 Act can be harmoniously construed so as to allow the provisions to remain workable then the very purpose of the Act to avoid dubious transactions can be saved. The ceiling authorities under the Act can ignore documents which are expressly provided for but they cannot ignore the provisions of law that remain un-amended. The optional registration of a land of the value of less than Rs. 100/- remains intact under the Registration Act, 1908. In spite of the fact that the said Act is under the concurrent list, i.e., List III of the Seventh Schedule of the Constitution, the State has not brought about any amendment so as to completely do away with oral transactions.

This has also to be viewed from the pragmatic angle which mentions a purposive interpretation, namely, as in the present case, there is a miniscule area of 2½ dhurs of land which on conversion will be equal to 0.0104 acres. The probability of a transaction by a person of very limited means through an oral transaction is very well contemplated and intentionally by the Parliament under the Registration Act, 1908. The Central legislation as saved under the Constitution was within the competence of the Central Legislature to make a provision of option under the Registration Act in respect of such transactions. This option cannot be said to be obliterated under the 1961 Act. Moreso, when the Section itself says "in accordance with the provisions of the Registration Act, 1908". If the ceiling authorities are of the opinion that the transaction is undervalued deliberately it is open to the ceiling authorities to adjudicate upon on the basis of evidence to be led by the State that the transaction has been deliberately undervalued for the purpose of avoiding the rigors of the Ceiling Act, 1961 or that the transaction is otherwise dubious. This harmonious interpretation would save the powers of the ceiling authorities and would also give a workable meaning to the provisions of the Registration Act. The right of pre-emption being a weak right, the same cannot in any way control either the valuation or registration of a document which is governed by law. The observation made in the case of **Basudeo Rai** (supra) to the effect that such mode of transfer cannot be reckoned for the purpose of Ceiling Act, therefore, overlooks the aforesaid aspect of the matter. The execution of a registered document was intentionally made optional by a legislation which still holds the field in respect of immovable property of the value of less than Rs. 100/-. Thus the ceiling authorities continue to enjoy this power to adjudicate upon the intention of the transaction on the basis of evidence relating to the valuation of the land. An oral transfer of a property of the value less than Rs. 100/- is not deemed to be an invalid transfer under the Registration Act read with the provisions of Section 54 of the Transfer of Property Act. The very value of the property, therefore, gives the option for non-registration. Even if the property is transacted through a registered document the value whereof is less than Rs. 100/- and the document is registered, the ceiling authorities still have the authority to ignore it if it is invalid on the parameters as set out under the Ceiling Act, 1961.

In my opinion, this purposive interpretation would save the purpose of 1961 Act without trenching upon the intention of the Legislature in the matter of an option being available in respect of land the value whereof is less than Rs. 100/-.

The right of pre-emption is a restrictive right and, therefore, to keep an oral transfer out of the transaction would be negating the option which stands protected under the statute. The 1961 Act clearly therefore intends to protect such rights and not to prohibit the consideration thereof in accordance with law.

I am therefore of the opinion that any transfer of land of the value of less than Rs. 100/- cannot be ignored for the want of compulsory registration in proceedings under the 1961 Act on the ground of being an unregistered transaction.

I would therefore hold that the power of the ceiling authorities to investigate and adjudicate upon an oral transfer being still available, the 1961 Act acknowledges transfers in accordance with law which includes the option of non-registration in respect of land the value whereof is less than Rs. 100/-. The judgment in the case of **Basudeo Rai** (supra) in view of the reasons given hereinabove to that extent does not lay down the law correctly.

The reference is answered accordingly.

(Amreshwar Pratap Sahi, CJ)

(Per : HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

I had the benefit of reading the scholastic judgment written by Hon'ble the Chief Justice in which the core issue involved in this Full Bench reference has been addressed with inimitable precision and brilliance. I have, however, been not able to persuade myself with the view finally taken therein and, therefore, I have written my separate judgment.

A Division Bench of this Court, in case of ***Basudeo Rai and others Vs. Altan Rai & Ors***., reported in **1984 BBCJ 302**, has held that an oral sale cannot be taken notice of by the revenue authorities for the purpose of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the 'the Act') and no transfer or sale can be taken cognizance of unless such transfer is made by an instrument duly registered under the Indian Registration Act, 1908 (hereinafter referred to as 'the Registration Act').

The correctness of the said enunciation of law by the Division Bench in case of ***Basudeo Rai*** (supra) has been doubted by another Division Bench in the order dated 09.04.1987 passed in this case and accordingly the matter has been referred to this Full Bench for reconsideration of the aforesaid proposition of law. The reference order reads thus: -

> **"The petitioner who is a purchaser of certain lands claims that prior to the purchase by registered sale deed of the lands sought to be preempted, he had also orally purchased a few decimals of land value of which was less than Rs.100/-, which did not require any registration under the Registration Act. The Land Reforms Deputy Collector and the Collector refused preemption on the ground that the purchaser-petitioner had become an adjoining raiyat by virtue of the oral purchase. But the learned Member, Board of Revenue, allowed the preemption, relying upoon a Bench decision of this Court in the case of Basudeo Rai & Ors. Vs. Altan Rai & Ors. (1984-**

BBCJ-302), in which on similar facts, it was held that no cognizance could be taken of oral transfer for the purposes of the operation of the provisions of the Ceiling Act, the document of transfer must be a registered one. The question for consideration is as to whether, by virtue of that piece of land and by virtue of it, can be claim to be an adjoining raiyat.

Learned counsel for the petitioner has challenged the correctness of this decision and has submitted that by virtue of the previous oral purchase, the petitioner became entitled to that piece of land and he must be recognized as adjoining raiyat.

We feel, the Bench decision of this Court in the case of Basudeo Rai & Ors. Vs. Altan Rai & Ors. (supra) needs consideration.

This application will be heard.

We refer it to a Larger Bench for considering the correctness of the bench decision in the case of Basudeo Rai & Ors. Vs. Altan Rai & Ors. (supra).

Let this matter be placed before the Hon'ble the Chief Justice for the needful.

Mr. Gopal Pandey has filed his appearance for respondent No.4. Let a copy of the writ application be served upon the learned counsel within a week.

Issue notice to respondent no.5, for which Talbana etc. must be filed within one week, failing which the application as against him, shall stand dismissed without further reference to a Bench.

Pending final hearing of this application, the operation of the order contained in Annexure '3' shall remain stayed."

The controversy has arisen out of a preemption matter under sub-Section (3) of Section 16 of the Act. Section 16(3)(i) provides that when any transfer of land is made after commencement of the Act to any person other than co-sharer or a raiyat of adjoining land, any co-sharer of a transferor or any raiyat, holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the land, to make an application before the Collector in prescribed manner for the transfer of the land to him, on the terms and conditions in the said sale deed. Apparently, the said right of preemption under Clause (i) of sub-Section (3) of Section 16 is not available when the purchaser himself is a (i) co-sharer and/or (ii) a raiyat of adjoining land. In order to resist the claim of preemption, the purchaser, in the present case has set up a case of oral purchase of a small piece of land, on payment of consideration of an amount, which was less than rupees 100, adjoining the land purchased by him through registered sale deed, which is subject matter of preemption.

Mr. S.D. Yadav, learned Additional Advocate General, has referred to a Division Bench decision of this Court in case of ***Bibi Jubeda Khatoon & Anr. Vs. The State of Bihar & Ors.,*** reported in **2011 (2) PLJR 216**, wherein the Division Bench has held that a claim of preemption under Section 16(3) of the Act cannot be defeated with respect to transfer of land on the basis of an unregistered oral gift by a person governed by Mohammedan

Law. The Division Bench in case of ***Bibi Jubeda Khatoon*** (supra) has followed the earlier Division Bench decision in case of ***Basudeo Rai*** (supra).

Whether the purchaser could successfully resist the claim of preemption on the basis of his claim of oral purchase of an adjacent land prior to purchase of the land which was subject matter of preemption, was the question before the Division Bench in the case of ***Basudeo Rai*** (supra), which has been answered in negative, correctness of which has been doubted in the reference order, as quoted hereinabove.

Since interpretation of Section 16 of the Act is at the center of the issue, which this Full Bench is required to consider, I consider it apt to reproduce the provision, which reads thus: -

> **"Section 16 - Restriction on future acquisition by transfer etc.-- (1) No person shall, after commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate of the ceiling area.**
>
> **Explanation.--For the purposes of this Section "transfer" does not include inheritance, bequest or gift.**
>
> **(2) (i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Indian**

Registration Act, 1908 (XVI of 1908), as to the total area of land by himself or through any other person any where in the State.

(ii) No such registering authority shall register any document evidencing any transaction if, from the declaration made under clause (i), it appears that the transaction has been effected in contravention of the provision of sub-Section (1).

(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908).

Explanation.--Nothing in this sub-Section shall be deemed to have any effect on the provisions of the Tenancy Law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

(3) (i) When any transfer of land is made after the commencement of this 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 the 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:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted, from land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum

equal to ten percent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure, prescribed in Order XXI, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed."

Section 54 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Transfer of Property Act') defines sale as transfer of ownership in exchange for a price paid or promised or part paid and part promised. Such transfer, in case of tangible immovable property of the value of 100 rupees and onwards can be made only by a registered instrument and in case of value of the property being less than 100 rupees, such transfer may be made either by a registered instrument or by delivery of the property, Section 54 of the Transfer of Property Act contemplates.

Section 17 of the Indian Registration Act makes registration of such documents as enlisted in sub-Section (1) thereof compulsory. Section 18 of the Registration Act supplies the list of documents, registration of which is optional and includes such instruments (other than instruments of gifts and wills), which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest of value less than 100 rupees in immovable property.

It is clear thus from the provision under the Transfer of Property Act and the Registration Act that for a valid transfer of an immovable property of value less than 100 rupees, registration of document is optional.

The short question, which is involved in the present reference, is as to whether provision under Section 16(2)(iii) of the Ceiling Act makes registration under the Registration Act compulsory in respect even of transfer of immovable property of a value less than 100 rupees, which is otherwise optional under the Transfer of Property Act and the Registration Act?

The Division Bench, in case of ***Basudeo Rai*** (supra), applying the rule of harmonious construction, has held that the Court should shun an interpretation, which spells out conflict in relation to provisions of the statute. Finding no repugnancy between the provisions of Transfer of Property Act and Indian Registration Act on the one hand and Section 16(2)(iii) of the Ceiling Act on the other, the Division Bench has observed that usual rule of construction is that the Court should not concentrate its attention on a provision in isolation, but must have due regards to other provisions of the Act and its general scheme. The Division Bench, thereafter, upon examining the ambit and scope of Section 16 of the Ceiling Act, and dealing at length the said provision, has observed that Section 16(1) of the Act would operate in two ways, I.e., (i) somebody would be trying to dispose of the excess area to remain within the ceiling area and (ii) some person, who has less than ceiling area may be interested in acquiring the land up to the ceiling area. For the said purpose, persons may take to dubious method to adjust their land holdings by creating *benami* transactions and *farzi* transactions. Such sale and acquisition may not be bonafide, but would only defeat the provisions of the Act. In order to keep a check on such dubious methods, Section 16(2)(i) requires a declaration in writing, duly verified by the transferee to be made before the registering authority under the Registration Act as to the total area of land held by him or through any other person, the Division Bench, in case of ***Basudeo Rai*** (supra), has observed.

Considering the entire provision, under Section 16 of the Act, the Division Bench has held that execution of a document and registration as required under the Indian Registration Act is must for operation of various provisions of Section 16. The Division Bench has opined that if oral sale is permitted, preemptor would not know the time of transfer in order to enable him to file his claim under Section 16(3) of the Act within three months of the transfer. Rejecting the submission advanced on behalf of the petitioner in case of ***Basudeo Rai*** (supra), the Division Bench has observed that if the interpretation sought to be put on behalf of the petitioner was taken to be correct, then an oral sale would go out of the purview of preemption for the reason that preemption is permitted within three months of the date of registration of document of transfer. In such circumstance, since there would be no document of transfer nor registration in a case of oral sale, preemptor shall not be entitled to claim preemption. The Division Bench has further observed that there can be no reasonable differntia to distinguish oral purchase and purchase through a registered instrument of transfer for the purpose of application of right of preemption under the Ceiling Act.

The Division Bench, in case of ***Basudeo Rai*** (supra), has then held that requirement of registration in accordance with the provision of the Registration Act, has been purposefully engrafted in Section 16(2)(iii) of the Act, which is not at all surplusages. The Division Bench is of the view that had the words, 'in accordance with the provisions of the Indian Registration Act', been not there in Section 16(2)(iii) of the Land Ceiling Act, it would have led to a confusion.

Cogitating the meaning of the word 'register' with reference to Section 16(2)(i) of the Ceiling Act, the Division Bench, in case of ***Basudeo Rai*** (supra), has observed that Indian Registration Act lays down the mode and manner of registration as well as the time when document is said to have been registered. 'Register', the Division Bench has opined, means to make formal entry of a document in a particular register. Referring to the Supreme Court's decision in case of ***Hira Lal Agrawal vs. Ram Padarath Singh*** **(AIR 1964 SC 244)**, the Division Bench has held that right of re-conveyance accrues to the preemptor only on the day of completion of the transfer. In case of ***Hira Lal Agrawal*** (supra), a question had arisen as to when the cause of action would arise for presenting an application for preemption under Section 16(3)(i) of the Act and when registration is said to be completed under the Indian Registration Act? Whether it is the day when an entry is made in the register as required under Section 61 of the Registration Act or when the document is copied in the register maintained under the Registration Act?

Having considered the Supreme Court's decision in case of ***Hira Lal Agrawal*** (supra), the Division Bench in case of ***Basudeo Rai*** (supra) laid down the law as follows :

> **"I, therefore, hold that the execution of a document of transfer and the registration thereof in accordance with the Indian Registration Act is an integral part of Section 16 of the Act for the purpose of operation of the various provisions of the said Section more particularly Section 16(3)(i0 of the Act. I will, however, hasten to add that a transfer is required to be registered under the Indian Registration Act for the purpose of Section 16 of the Act. Any transfer other than the said mode cannot be reckoned for the purpose of the said Section. I say so because other Sections particularly, sub-section 1(iii) of Section 5 envisages taking cognizance of transfer other than by a registered instrument for the purpose of the said section."**

In my considered view, legal interpretation of the expression, '*registered in accordance with the provisions of Indian Registration Act, 1908*', occurring in Clause (iii) of sub-Section (2) of Section 16, is at the core of the issue for answering the present reference. Whether this expression would mean a document to be registered in accordance with the provisions of the Registration Act, i.e., to be compulsorily registered, if the Registration Act so requires and to be registered by choice, if the Registration Act so permits? Whether the expression would mean that a document will be required to be registered only if the Registration Act makes it to be compulsory? The other possible interpretation of this expression would be that despite the provisions under the Transfer of Property Act and Registration Act prescribing otherwise, after coming into force of the Ceiling Act, registration of document for effecting transfer, exchange, lease mortgage, bequeath or gift would be must and only the process/method of registration of such documents would be the same as provided under the Registration Act.

It is golden rule of statutory interpretation that the words and phrases should be given the literal meaning as they exist in the statute book because it is the language used in the statute, which discloses the legislative intent. It is only when a statutory provision is capable of being given more than one interpretation, a duty is cast on the Court to find out the interpretation which represents the true intent of the legislature. In case of any doubt over the meaning of a word or set of words in a statute, they are to be taken in a sense which would harmonise with the object of the enactment and the perspective in which the statute was enacted.

I may usefully refer to a very apt observation of Supreme Court in case of ***Utkal Contractors and Joinery Pvt. Ltd. and Ors. vs. State of Orissa and Ors.,*** reported in **(1987) 3 SCC 279**, that ‘a statute is best understood if we know the reason for it’.

The reason for a statute is the safest guide to its interpretation as the words of a statute take their colour from the reasons for it.

For the said purpose, I need to briefly take note of object of and the reason for enactment of relevant provisions of the Ceiling Act, in order to find out true intent of the expression '*registered in accordance with the provisions of the Indian Registration Act*'.

I must note at the very outset that by virtue of Section 3 of the Act, the provisions under the Act have overriding effect and are to prevail over all other laws notwithstanding anything to the contrary contained therein except the provisions of the Bihar Bhoodan Yajna Act, 1954.

In the aforesaid background, Section 16 of the Act, which is under Chapter V of the Act dealing with the restrictions on future acquisition needs to be examined. Section 16 puts restriction on future acquisition of land by transfer, exchange, lease, mortgage, agreement for settlement of any land, which, together with the land, if any, already held by him, exists in the aggregate in the ceiling area. These restrictions have been seemingly put to accomplish the avowed objects of the Ceiling Act.

On a closer scrutiny of Section 16 of the Ceiling Act as a whole, it is not difficult to find out the reason behind making the registration of documents of transfer/exchange etc. compulsory. Whereas, sub-Section (1) of Section 16 puts bar on future acquisition of land beyond the ceiling area, sub-Section (2) makes it compulsory to make a declaration in writing, in any document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease etc. before the registering authority, as to the total area of land held by himself or through any other person anywhere in the State. Clause (ii) of sub-Section (2) restrains the registering authority from registering any document evidencing any transfer, if from declaration made under Clause (i) of sub-Section (2) it appears that the transaction has been effected in contravention of the provisions of sub-Section (1). Immediately thereafter, Clause (iii) of sub-Section (2) puts bar on transfer of land without a document registered in accordance with the provisions of Indian Registration Act. The reason behind making it compulsory for a document to register under Clause (iii) or for that purpose requirement of declaration under Clause (i) of sub-Section (2) is, in my view, to ensure that the purpose as contemplated under Section 16(1) is not frustrated. If oral purchase is to be recognized, then very purpose of Section 16(1) of the Act can be easily defeated inasmuch as a person may acquire land beyond the ceiling area by oral sale without complying with the mandatory requirement of declaration under Clause (i) of Sub-section (2) and subsequent act under Clause (ii) of the said Sub-section.

Clause (iii) of sub-Section (2) of Section 16 of the Ceiling Act, too puts restriction on certain transactions, apparently to obviate scope of frustrating the purposes of the Act. In my view, language of Clause (iii) of sub-Section (2) of Section 16 of the Act suggests that it is a provision of general application for all transactions in the nature of 'future acquisition' of agricultural land by transfer, exchange and other modes as indicated in sub-Section (1) of Section 16 of the Act.

Coming now to sub-Section (3) of Section 16, which is the preemption provision under the Ceiling Act. A close reading of sub-Section (3) of Section 16 would indicate that it confers a right on (a) co-sharer of the transferor; and (b) any raiyat holding the land adjoining the land transferred, to make an application before the Collector in the prescribed manner for transfer of the land to him on the conditions contained in the said transfer deed, in case transfer of land is made after commencement of the Act to any person other than a co-sharer or a raiyat of the adjoining land.

Such application invoking his preemptory right from transfer of land has to be made within three months from the date of registration of the document of transfer. The preemptor has to deposit the purchase money, as indicated in the sale deed, with a sum equal to 10% of the purchase money.

Once such deposit is made under Clause (ii) of Sub-Section (3) of Section 16, the preemptor is entitled to be put in possession of land even during the pendency of the application under Clause (i). If finally the application is allowed, the Collector would be required to pass an order directing the transferee to convey the land in favour of the applicant by executing registered document of transfer.

Apparently, the preemptor's cause of action to file an application under Clause (i) of sub-Section (3) of Section 16 will arise only when the document of transfer of land is registered, clearly because the application can be filed within 'three months of the date of registration'.

If clause (iii) of sub-Section (2) of Section 16 of the Act is interpreted in a way that registration of document as indicated therein would be required only if the same is compulsorily required under the Indian Registration Act, Clause (i) of Sub-Section (3) of Section 16 shall completely lose its significance in respect of transactions where the value of the land is less than 100 rupees. This interpretation, in my view, would defeat the very object and purpose of the provision under sub-Section (3) of Section 16 of the Act.

I am, therefore, of the opinion that provisions under Section 16 of the Act, which lay down restrictions on future acquisition of agricultural land will have to read in its entirety to render every word and expression meaningful. Situated thus, in my opinion, on harmonious construction of the provisions under Clause (ii) of sub-Section (2) of Section 16 and sub-Section (3) of the said Section, no land can be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document is registered, even if such document is not essentially registrable under the Indian Registration Act.

It is also a prudent rule of statutory interpretation that every word in a statute is looked at before the provision or word is attempted to be construed. The legislature does not waste words nor uses unnecessary expressions and, therefore, every word of enactment should be given a meaning, which would advance the object of enactment.

Keeping this principle of statutory interpretation in mind, let me now deal with the necessity of the expression '*in* *accordance with the provisions of the Indian Registration Act, 1908*' in Clause (iii) because it may be argued the rest of the said Clause (iii) was adequate for making it mandatory that transactions mentioned therein must be through registered documents.

The argument, which is being advanced to question the correctness of the Division Bench decision in case of ***Basudeo Rai*** (supra), which has already been noticed, is that the expression 'in accordance with the provisions of Indian Registration Act, 1908' means that registration would be compulsory, only if it is compulsory under the Registration Act and not otherwise.

I do not find much force in this contention. While making it compulsory that documents must be registered for a transaction as indicated in Clause (iii), the legislative intent that the documents should be registered in accordance with the 'procedure' prescribed in the Registration Act, is clear. Part IV of the Registration Act prescribes the time of presentation, Part V the place of registration of documents, whereas Part VI as to the persons to present the documents for registration, power of attorney recognizable for the purpose of Section 32 of the Registration Act, enquiry before registration by registering officer and procedure on admission and denial of execution, respectively. How a document is to be registered has been prescribed extensively by the Registration Act. It is true that Part-III of the Registration Act deals with such documents of which registration is compulsory and such documents of which registration is optional. In my opinion, what is optional under Section 18 of the Registration Act becomes compulsory by virtue of the provisions under Clause (iii) of sub-Section (2) of Section 16 of the Ceiling Act. This is how, in my opinion, the provision under Section 16 can be harmoniously construed, else provision under Section 16(3) of the Act would become meaningless in case of oral purchase.

In view of the discussions as above, I am of the considered opinion that no transaction of oral sale of agricultural land after commencement of the Ceiling Act can be taken notice of for purpose of Section 16 of the Ceiling Act. Such transaction would be hit by the statutory stipulation under Clause (iii) of sub-Section (2) of Section 16 of the Act.

Having discussed as above, in my considered view, the Division Bench in case of ***Basudeo Rai*** (supra) has correctly laid down the law that an oral sale cannot be taken cognizance of for the purpose of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961.

I answer the reference accordingly.

(Chakradhari Sharan Singh, J.)

(Per: Hon'ble Mr. Justice Sudhir Singh)

This reference to the Full Bench being made for considering the correctness of the Division Bench decision of this Court rendered in the case of Basudeo Rai & Ors. -Vs-Altan Rai & Ors., reported in 1984 BBCJ 302. The order of reference dated 09.04.1987 reads thus:

> "The petitioner who is a purchaser of certain lands claims that prior to the purchase by registered sale deed of the lands sought to be pre-empted. He had also orally purchased a few decimals of land value of which was less than Rs. 100/-, which need not require any registration under the Registration Act. The Land Reforms Deputy Collector and the Collector refused pre-emption on the ground that purchaser-petitioner had become an adjoining raiyat by virtue of the oral purchase. But the learned Member, Board of Revenue, allowed the pre-emption, relying upon a Bench decision of this Court in the case of Basudeo Rai & Ors. –VS- Altan Rai & Ors. (1984-BBCJ-302), in which on similar facts, it was held that no cognizance could be taken of oral transfer for the purposes of the operation of the provisions of the Ceiling Act, the document transferred must be a registered one. The question for consideration is as to whether, by virtue of the oral purchase, the petitioner has become owner of that piece of land and by virtue of it, he can claim to be an adjoining raiyat.

Learned counsel for the petitioner has challenged the correctness of this decision and has submitted that by virtue of the previous oral purchase, the petitioner became entitled to that piece of land and by virtue of it, he must be recognised as adjoining raiyat.

We feel, the Bench decision of this Court in the case of Basudeo Rai & Ors. –VS- Altan Rai & Ors. (Supra) needs consideration.

This application will be heard.

We refer it to a Larger Bench for considering the correctness of the Bench decision in the case of Basudeo Rai & Ors. –Vs- Altan Rai & Ors. (supra).

Let this matter be placed before the Hon'ble Chief Justice for the needful.

Mr. Gopal Pandey has filed this appearance for respondent no.4. Let a copy of the writ application be served upon the learned counsel within a week.

Issue notice to respondent no.5, for which Talbana etc. must be filed within one week, failing which the application as against him, stand dismissed without further reference to a Bench.

Pending final hearing of this application, the operation of the order contained in Annexure-3 shall remain stayed."

The 'fact in issue' led to this matter is that the respondent no. 5 Kishun Singh sold a piece of land to the petitioner measuring 29 ¾ decimals for a consideration of Rs. 5000/- appertaining to Khata No. 37 bearing Plot No. 449, corresponding new Khata No. 14 bearing Plot No. 449, situated in Village- Dudhauli, under Circle and Police Station- Akbarpur within the district of Nawada, by a Sale Deed dated 01.03.1982, which came to be registered on 05.08.1982, having Deed No. 3630-1982. The pre-emptor respondent no.4 filed an application on 21.10.1982, under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) before the Deputy Collector Land Reforms, Nawada, on the ground of holding land adjoining to the land transferred. Admittedly, as per the sale deed of transferred land, the pre-emptor (Respondent No.4) being a raiyat holding land adjoining eastern and western boundary of the land in question purchased by the petitioner. The purchaser petitioner who was an opposite party in the pre-emption application before the Deputy Collector Land Reforms, bearing Case No.24/82-83 took a plea in his show cause that he himself had become an adjoining raiyat to the land in question by virtue of an oral sale of land for value of Rs. 90/ (Ninety) made on 07.03.1982, by the Respondent No.5 in his favour much prior to the filing of the pre–emption application on 21.10.1982, by the Respondent No. 4, and even prior to the registration of the Sale Deed on 05.08.1982. The purported oral sale as pleaded by the purchaser petitioner being made in respect of a piece of land measuring 2 ½ dhur for consideration of Rs.90/ (Ninety) adjoining South to the land in question. Thus, the petitioner contended that the respondent no.4 having no right of pre-emption under Section 16 (3)of the Act on the date of filing of pre-emption application i.e., 21.10.1982, in respect of the land transferred. Per-contra the pre-emptor (respondent no.4) contended that the plea of oral sale made on 07.03.1982, purposely being taken by the purchaser petitioner as to defeat his right of pre-emption with regard to the transferred land.

The Deputy Collector, Land Reforms, Nawada rejected the pre-emption application of the respondent no.4 vide order dated 20.12.1983, holding therein that by virtue of the oral sale dated 07.03.1982, the purchaser (petitioner herein) shall be deemed to be an adjoining raiyat to the land transferred, therefore, unless the oral sale was declared invalid, the claim of pre-emption of the respondent no.4 could not be maintainable, hence, rejected the pre-emption application.

Against the order of the Deputy Collector, Land Reforms, Nawada, rejecting the pre-emption application, the respondent no.4, preferred an appeal in the court of Collector, Nawada, who vide order dated 09.04.1985, dismissed the appeal affirming the order dated 20.12.1983, of the Deputy Collector, Land Reforms, Nawada.

The respondent no.4 then preferred Ceiling Revision No. 118/1985 before the Board of Revenue, Bihar against the order of the Collector, Nawada, dated 09.04.1985, dismissing the appeal and rejecting his claim of pre-emption. The learned Additional Member, Board of Revenue, Bihar, relying upon a Division Bench decision of this Court rendered in the case of Basudeo Rai & Ors (Supra) held that the plea of oral sale taken by the purchaser cannot be recognized and the pre-emptor is admittedly the adjoining raiyat of the land transferred, therefore, the claim of pre-emption is justified and the order of the Collector dated 09.04.1985, was, accordingly, set aside and revision application was allowed vide order dated 17.01.1987, which necessitated this writ petition, challenging the said order dated 17.01.1987 (Annexure-3) passed by the learned Additional Member, Board of Revenue, Bihar.

Before I may proceed further, it would be appropriate to take notice of the relevant provisions of the Act. Section 16 of the Act reads as under:-

> "16. Restriction on future acquisition by transfer etc.-(1) No person shall, after the commencement of this Act, either by himself or through any other

person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area.

Explanation:- For the purpose of this Section “Transfer” does not include inheritance, bequest or gift.

(2) (i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Indian Registration Act, 1908 (XVI of 1908), as to the total area of land held by himself or through any other person anywhere in the State.

(ii) No such registering authority shall register any document evidencing any transaction if, from the declaration made under clause (i), it appears that the transaction has been effected in contravention of the provision of sub-section (1).

(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908).

Explanation:- Nothing in this sub-section shall be deemed to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

(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:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed."

Together with the said provision, it would be also relevant to take notice of Section 54 of The Transfer of Property Act, 1882, as also, Section 18 of The Registration Act, 1908. Section 54 of The Transfer of Property Act,1882 reads thus:

"54. "Sale" defined - "Sale" is a transfer of ownership in exchange for a price paid or promised or part - paid and part-promised.

Sale how made - Such transfer, in the case of tangible immovable property of value of one hundred rupees and upwards, or in case of reversion or other tangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for Sale - A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

Section 18 of The Registration Act, 1908 reads thus:-

"18. Documents of which registration is optional- Any of the following documents may be registered under this Act namely-

(a) instruments (other than the instrument of gift and wills) which purport or operate, to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property:

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c)[xxx]

[cc) instruments transferring or assigning any decree or order of a court of any, award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in immovable property;

(e) wills; and

(f) all other documents not required by Section 17 to be registered".

This reference vide order dated 09.04.1987 has been made for considering the correctness of the decision of Basudeo Rai case (Supra), therefore, for the purpose of proper appreciation of the said decision it would be necessary to take notice of the relevant facts, as also, the issue involved therein. Some relevant paragraphs of the said decision which clarify the facts together with the issues involved therein, are as under:

"1. Whether oral sale is reckonable under the provision of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) is the question, which falls for decision in these two writ petitions. These two writ petitions have come up before this Bench on reference by Single Judge. As the point is common to both the writ petitions, this judgment will govern and dispose of the cases.

2. The point being short, I shall narrate only those facts, which are jermane for this purpose. The petitioners are purchasers. By two Sale Deeds dated 14.04.1971, 12 Kathas and 01 Katha, 15 dhurs, out of Survey Plot No.1433 C.S. appertaining to Khata No. 337, village- Sivaisighpur, P.S. Mohiuddin Nagar, District-Samastipur, were acquired by the petitioner. The Sale Deeds were registered under the Indian Registration Act on 05.05.1971. On 02.06.1971, two applications Under Section 16 (3) of the Act were filed by respondents bearing Ceiling Case No. 09 of 1971 (12 Kathas) and Ceiling Case No. 10 of 1971 (1 Katha, 15 dhurs). The said claim was on the basis of being adjacent raiyat of Cadastral Survey Plot No. 1432. The petitioner disclosed in the show cause that prior to the filing of ceiling case, they have acquired by oral sale 05 dhurs of land of C.S. Plot No. 1432 for a consideration of Rs. 50/-. Therefore, they being adjacent raiyat, the ceiling cases filed by the respondents are not maintainable. It may be stated here that out of C.S. Plot No. 1432 during the

revisional survey 03 plots have been carved out and they bear nos. 3252, 3253 and 3251. The respondents are admittedly owner of Plot Nos. 3252 and 3253. Pre-emption application of the respondent failed both in the court of Deputy Collector, Land Reforms as well as before the Additional Collector. Against that the respondent preferred two revisions before the Member, Board of Revenue bearing Nos. 448/73 and 449/74. Member of the Board of Revenue, however, was of the opinion that since the claim of the purchaser is based on oral sale to justify their adjacency prior to the filing of the preemption application, and oral sale cannot be taken notice of under the provisions of Section 16, the said cannot defeat the claim of pre-emptor. The two revision petitions were disposed of by a common judgment by Member of Board of Revenue.

The purchasers have, therefore, filed two writ petitions assailing the decision of the Member, Board of Revenue in refusing to reckon their oral purchase on 25.04.1971 of the adjacent plot, prior to the filing of preemption application on 02.06.1971.

10. I do not, therefore, finds any substance in the argument of learned counsel for the petitioner. I cannot persuade myself to hold that oral sale can be taken notice of by the revenue authorities for the purpose Section 16 of the Act. No transfer of sale could be taken cognizance unless such transfer is made by the registered instrument, duly registered under the Indian Registration Act. Consequently, the petitioners' oral purchase on 25.04.1971 of 05 dhurs of land a sum

> of Rs. 50/-, out of R.S. Plot No. 3251 have to be ignored. The said oral acquisition cannot defeat the right of preemptor of an adjacent raiyat like that of the respondents."

Learned Additional Advocate General for the State Sri S. D. Yadav placed his reliance upon a Division Bench decision of this Court rendered in the case of Bibi Jubeda Khatoon and Another–Vs-The State of Bihar & Ors. reported in 2011 (2) PLJR 216. In the said matter issue was relating to validity of the oral gift in favour of the petitioner therein, and on the strength of such purported oral gift, whether claim of the respondents for pre-emption could be defeated. In paragraph 8 of the said decision the Division Bench considering the explanation to Section under 16 (1) of the Act, which provides that for the purpose of this Section "transfer" does not include inheritance, bequest, or gift, and also considering Section 16 (2) (iii) of the Act, which provides that no lands shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without document registered in accordance with the provisions of The Registration Act, 1908, held in Paragraph No.9 of the judgment, as under:

> "We are, therefore, of the view that alleged oral gift in favour of petitioner no. 2 is invalid, and cannot be countenanced, while considering an application under Section 16 (3) of the Act, and the claim for pre–emption set

> up by respondent nos. 6 and 7 cannot be defeated on the strength of the alleged oral gift in favour of petitioner no. 2. It is relevant to state that the learned appellate authority, as well as the learned revisional authority, have concurrently held that respondent nos. 6 and 7 are adjoining raiyats with respect to the plots in question, i.e. the plots purchased by petitioner no.1. We agree with the discussions in both the orders. The order of the learned first authority was rightly set aside."

In order to consider the overriding effect of the Act, I should take notice of Section 3 of the Act, which reads thus:

> 3. "Provision of the Act to prevail over other laws – The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any other law, custom, usage or agreement, for the being in force or in any decree or order of any Court :
>
> Provided that nothing contained in this Act shall be deemed to have any effect on the provisions of the Bihar Bhoodan Yagna Act, 1954 (Bihar Act XXII of 1954)"

The expression "notwithstanding anything to the contrary contained in any other law…." occurring in this Section cannot be construed to take away the effect of any provision of any other law, which is not contrary or in conflict with the provisions of the Act. The amplitude of a non-obstante clause must be kept confined to the legislative policy, it can be given effect to the extent Legislature intended and not beyond the same. Where there is no clash of provision, such non-obstante clause having no significance; if there a conflict or collision, then it shows what is to prevail. There should be a clear inconsistency between the two provision before giving an overriding effect to the non-obstante clause.

Now coming to the expressions used in Section 16(2)(iii) of the Act, it is apparent that provision of the Indian Registration Act, 1908, have been made applicable for the purposes of transfer of land, exchange of land..etc. The clause (iii) of sub-section(2) of Section 16 of the Act starts with a negative word, which prohibits any kind of transfer of right, title or interest relating to land without a document registered in accordance with the provisions of the Indian Registration Act, 1908.

Therefore, the words of Section 16 (2)(iii) of the Act indicate that for the purpose of transfer of land, registration of document in accordance with the provisions of the Indian Registration Act, 1908, is to be made, otherwise transfer of land is forbidden. Under Section 16(2)(iii) of the Act, there is no such non-obstante clause, which may limit the ambit and scope of Section 18 of the Indian Registration Act, 1908, and Section 54 of the Transfer of Property Act, 1982, rather a significant and meaningful phraseology being used i.e., "in accordance with the provisions of the Indian Registration Act, 1908" which has not been properly considered in the case of Basudeo Rai (Supra) and Bibi Jubeda Khatoon (Supra).

In the case of Quebec Railway Vs. Vandry, AIR 1920 PC 181, their Lordships held that effect must be given if possible to all the words used, for the legislature is deemed not to waste its words or to say anything in vain.

Regarding the rules of interpretation of Statute the words of Viscount Simon in Hill Vs. William Hills (Park Lane) Ltd. 1949 AC 530, being referred in various judgments by the Hon'ble Supreme Court of India, which are as under:

"…………...When the legislature enacts a particular phrase in a Statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every words in the Statute implies that, unless there is a good reason to the contrary, the words add something which has not been said immediately before".

It is well recognized principle of interpretation that the Endeavour of Court would, however, always to adopt a rule of harmonious construction. The Court should always presume that the Legislature inserted every part in legislation for a purpose and the legislative intention is that every part of the Statute should have effect.

Section 18 of The Registration Act, 1908, makes the registration optional, of a document/instrument relating to transfer of right, title or interest in land i.e., sale of land, of a value less than one hundred rupees, and Section 54 of The Transfer of Property Act, 1882, also provides that in case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of property.

It would not, therefore, be right to say that Clause (iii) of Sub-Section (2) of Section 16 of the Act necessarily nullifies the oral sale of land of a value less the one hundred rupees, notwithstanding it being made in terms of the provisions engrafted under Section 54 of the Transfer of Property Act, 1882, for which registration of document relating to transfer of land has been made optional as envisaged under Section 18 of The Registration Act, 1908.

Now coming to the next aspect of the 'matter in issue', I must notice the language and import of Section 16(3) (i) of the

Act, which says that after commencement of the Act, when any transfer of land is made to any person other than a co-sharer or a raiyat of adjoining land, in that circumstance, any co-sharer of the transferor or any adjoining raiyat of the transferred land shall be entitled for pre-emption over the land subject to the conditions prescribed therein. In other words, if any transfer of land is made to a co-sharer or a raiyat of adjoining land in that case, there is no scope of pre-emption in respect of transferred land.

Application under Section 16(3) of the Act is filed in Form L.C. 13 in terms of Rule 19 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules 1963. While filing such application, Pre-emptor has to make specific statement that transferee (purchaser) being not the co-sharer or an adjoining raiyat of the transferred land. In my view, the determinative factor in the matter of pre-emption is the status of a person of being a co-sharer or a raiyat holding land adjoining the transferred land. The word 'raiyat' is defined under Section 2(k) of the Act; which reads thus:

"Section 2(k)- 'raiyat' means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners and includes also the successors in-interest or persons who have acquired such a right and includes, in the district of Santhal Parganas a village head man in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of 1908) applies a Mundari, Khuntkattidar or a Bhuinhar.”.

Section 2(n) of the Act further provides that all words and expressions used but not defined in this Act, shall have the same meaning as are assigned to them in the respective tenancy law in forced and applicable to that area.

I must take notice of the Explanation attached to Section 16(2)(iii) of the Act which says: Nothing in this sub-section shall be deemed to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

To my mind, raiyati interest in a land can be acquired through many sources as being provided under the tenancy law of the area. Transfer of land by virtue of a registered deed is not the only source for acquiring raiyati interest in the property. Therefore, claim made by a person of being an adjoining raiyat of transferred land has to be adjudged not only on the touchstone of Section 16(2)(iii) of the Act, rather taking into account, the provisions of the tenancy law applicable in the area. It is obligatory for the 'Collector' which includes an Additional Collector or any other officer not below the rank of Sub-Deputy Collector to make an enquiry under any pre-emption proceedings regarding the claim, if so, of adjoining raiyat, as also, the source of raiyati interest, of the respective parties, which would be determinative for either allowing or rejecting the claim for pre-emption.

Thus, the decision rendered in the case of Basudeo Rai & Ors (Supra) does not lay down the correct law to the extent of holding therein that the oral acquisition of land i.e., oral sale of land made in favour of the purchaser (petitioner therein) for a sum of Rs. 50/- had to be ignored and the said oral acquisition could not defeat the right of Pre-emptor.

In view of the provisions referred above and the discussions made hereinabove, I am of the considered opinion that plea of transferee of being himself an adjacent raiyat to the land transferred by virtue of an oral sale of land of a value less than Rs. 100/- (one hundred rupees) made in his favour is tenable provided such acquisition of land by virtue of oral sale being made on the date of transfer of the land under pre-emption. It is made clear that the date of transfer of land would be reckoned in terms of Section 47 of The Registration Act, 1908.

Accordingly, the question referred to this Bench, stands answered.

(Sudhir Singh, J.)

U.K./Vikash/Pawan

AFR/NAFR	A.F.R.
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