

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2706 of 2019

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Mahesh Thakur son of Ganaur Thakur Resident of Village- Kishun Nagar,
P.O.- Sain, P.S.- Vaishali (O.P. Belsar), District- Vaishali

... .. Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The Additional Collector, Vaishali at Hajipur
4. The Dy. Collector, Land Reforms, Vaishali at Hajipur
5. Baidyanath Thakur son of Late Chandradeep Thakur Resident of Village Kishun Nagar, P.O. Sain, PS Vaishali (O.P. Belsar), District- Vaishali
6. Nand Kishore Chaudhary son of Late Jamun Chaudhary Resident of Village- Kishun Nagar, P.O. Sain, PS- Vaishali (O.P. Belsar), District Vaishali

... .. Respondents

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Appearance :

For the Petitioner/s : M. rBhubneshwar Prasad, Advocate
For the Respondent/s : Mr. Rakesh Ranjan, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 15-02-2019 The order dated 03.05.2018 passed by the learned

Chairman, Bihar Land Tribunal, Patna, (hereinafter referred to
as ‘the Tribunal’) in B.L.T. Case No.364 of 2016 is being
challenged in the present writ application.

The case before the Tribunal arose out of a
preemption proceeding 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’). The
petitioner herein is purchaser of 9.50 decimals of land of Plot
No. 144 of Khata No.10 through a sale deed dated 31.03.2009
executed by respondent No.6. Claiming to be the adjoining
raiyat of the vended plot, respondent No.5 made an application



under Section 16(3) of the Act, in the manner prescribed therein, claiming his right of preemption. His claim was resisted by the petitioner in the preemption proceeding mainly on the ground that the vended land was not agricultural land, which had been purchased for construction of a residential house. The claim for preemption was allowed by the Deputy Collector Land Reforms by an order dated 13.03.2010 passed for L.C. Case No.2/2009-10. The vendor respondent No.6 was accordingly asked to transfer the land in favour of the preemptor on the terms and conditions contained in the sale deed. An appeal was preferred before the Deputy Collector, Vaishali at Hajipur, against the order of the Deputy Collector Land Reforms dated 13.03.2010 giving rise to L.C. Appeal No. 127 of 2009-10/144 of 2011-12. The Additional Collector affirmed the order of the Deputy Collector, Land Reforms and thereby dismissed the appeal of the petitioner by an order dated 30.06.2011. The petitioner thereafter preferred a revision petition before the Commissioner, Tirhut Division, muzaffarpur giving rise to Ceiling Preemption Revision Case No.155 of 2011, which came to be allowed by an order dated 03.02.2015, which was challenged by respondent No.5 herein before the Bihar Land Tribunal giving rise to B.L.T. Case No.364 of 2016. The case before the Bihar Land Tribunal



has been allowed by the aforesaid order of the learned Chairman of the Tribunal dated 03.05.2018. In the aforesaid background, the petitioner, the purchaser of the land in question, has questioned the sustainability of the order of the Tribunal.

Mr. Bhubneshwar Prasad, learned counsel appearing on behalf of the petitioner, has submitted that the land, which was subject matter of preemption case being not agricultural land, rather homestead, the preemptor could not have successfully claimed his right of preemption under Section 16(3) of the Act. He has argued that the land was, in fact, purchased for the purpose of construction of a house. It has also been submitted that there was ample evidence on record to substantiate the petitioner's claim that a house had been constructed over the said plot of land which could not be termed to be agricultural land so as to attract the provisions under Section 16(3) of the Act.

I have perused the pleadings on record and have carefully gone through the order of the Tribunal impugned and other materials on record. Before I advert to the reasons assigned by the Tribunal for allowing the claim of preemption of respondent No.5 on the basis that the land in question was agricultural land, I need to take note of the definition of Land



under Section 2(f) of the Act, which reads thus :-

“(f) "land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or 9[forest land or] 10[also the land] perennially submerged under water] or the homestead of land-holder;

Explanation I.--"Homestead" means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building and includes any outbuilding for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

11[Explanation II.--Land perennially submerged under water shall not include submerged in the bed of a river.]”

It is clear from the definition of land that even a homestead of a landholder may be a land within the meaning of Section 2(f) of the Act read with its Explanation-I. Such homestead is a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out building and building for the purpose and connected with agriculture or horticulture also comes within the definition of ‘land’.



In the present case, this is not in dispute that in the sale-deed the nature of the land has been described as *dhanhar*-II. In the revisional survey khatian, which was produced before the appellate Court also, the land was shown to have been mentioned as *dhanhar*, i.e., agricultural. The Tribunal has noted that in the sale-deed it was not even mentioned that the land was being purchased for the purpose of construction of house.

It is noteworthy that the petitioner had taken a plea before the revisional court that he being a landless person, Section 16(3) of the Act will have no application in respect of purchase of land made by him. Learned counsel for the petitioner has not disputed the fact that no such plea was ever taken either before the original authority, i.e., Deputy Collector Land Reforms, or before the appellate authority. For the first time, before the revisional court, he raised this point. The revisional court was required to proceed on the basis of the records of the lower revenue courts. The revisional court, however, recorded that plea of the petitioner of being landless was not rebutted by respondent No.5. Since the said plea was not taken before the original authority, there was no occasion for him to rebut the said plea. The Tribunal has rightly refused to accept the plea of the petitioner on this count, for the reasons



assigned therein.

In my opinion, the impugned order of the Tribunal does not suffer from any illegality or irregularity, requiring this Court's interference.

This application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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