

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8194 of 2019

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Sriman Narayan Rai Son of Fauzdar Rai Resident of Village-Mukhrawan,
Police Station-Kuchhila in the District of Kaimur (Bhabhua).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department , Government of Bihar, Patna
3. The Commissioner, Patna Division, Patna
4. The Collector, Kaimur at Bhabhua.
5. The Deputy Collector Land Reforms, Mohania in the District of Kaimur at Bhabhua.
6. Kamla Rai Son of Late Raja Ram Rai Resident of Village-Mukhrawan, Police Station Kuchhila in the Districtof Kaimur (Bhabhua), A/P Resident of Village-Khardhihan, Police Station-Dhamarkol in the District of Gazipur (U.P.).
7. Kamta Rai Son of Late raja Ram Rai Resident of Village-Mukhrawan, Police Station Kuchhila in the Districtof Kaimur (Bhabhua), A/P Resident of Village-Khardhihan, Police Station-Dhamarkol in the District of Gazipur (U.P.).
8. Ram Narayan Rai @ Ram Naresh Rai, Son of Late Raja Ram Rai Resident of Village-Mukhrawan, Police Station Kuchhila in the Districtof Kaimur (Bhabhua), A/P Resident of Village-Khardhihan, Police Station-Dhamarkol in the District of Gazipur (U.P.).
9. Jai Prakash Rai Son of Late Keshav Rai Resident of Village-Mukhrawan, Police Station Kuchhila in the Districtof Kaimur (Bhabhua), A/P Resident of Village-Khardhihan, Police Station-Dhamarkol in the District of Gazipur (U.P.).
10. Anand Shankar, Son of Late Mohan Rai Resident of Village-Mukhrawan, Police Station Kuchhila in the Districtof Kaimur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar
For the Respondent/s	:	Mr.Rishi Raj Sinha (SC-19) with Mr. Birendra Pd. Singh AC to SC-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

3 25-04-2019

The petitioner is assailing an order dated



19.12.2018, passed by the learned Chairman, Bihar Land Tribunal, Patna in B.L.T. Case No. 233 of 2018, whereby the claim of pre-emption under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act'), of Respondent No.10 has been sustained after reversing the decision of the revisional authority dated 21.11.2017, in Land Ceiling Revision Case No. 162 of 2010, whereby the order passed by the appellate authority setting aside the order of the Deputy Collector Land Reforms, rejecting the petitioner's claim of pre-emption had been affirmed.

2. It is noted at the very outset, that Section 16(3) of the Act had since been repealed with the coming into force of Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) (Amendment) Act, 2019 (hereinafter referred to as 'the Act of 2019'), sub-section (2) of Section 2 of the Amendment Act, 2019, reads thus:-

“2. Amendment in Section 16 of the Act, 1961(1) Sub-section (3) of Section -16 of the said Act is hereby repealed.

(2) In the Section-16 of the said Act,



the following new sub section (4) shall be added:-

“(4) (i) After the repeal of sub-section (3) of Section 16 of this Act, all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated.

(ii) Pursuant to the repeal of sub-section (3) of Section 16 of this Act, any purchase money together with a sum equal to 10% thereof, already legally deposited shall be refunded, without any interest, to the depositor.”

3. The Amendment Act, 2019 came into force with immediate effect after its publication in official gazette on 25.02.2019, i.e., after passing of the order, which is impugned. However, since in the present writ application, the legality of the order passed by the learned Chairman, Bihar Land Tribunal, Patna is being assailed, the same needs to be examined first. The facts appear to be undisputed, as has been recorded by the learned Chairman in the impugned order. There is no ground taken in the writ application that there is any error of record in the impugned order.



Admittedly, thus, the petitioner had got executed two sale deeds one in his favour and the other in the name of his brother, both on 25.01.2006, by respondent Nos. 6 to 9 in respect of 1.12 acres each. The respondent No.10 claimed pre-emption against both the sale deeds, claiming himself to be the adjoining raiyat of the lands purchased through both the sale deeds. Two pre-emption cases were accordingly registered before the Deputy Collector Land Reforms. The Deputy Collector Land Reforms allowed the claim of pre-emption by an order dated 14.06.2008 and rejected the petitioner's claim that he himself became adjoining raiyat of the two plots, by virtue of purchase of the lands through two separate sale deeds on the same date. The petitioner, thereafter filed an appeal, which was allowed by the Collector, Kaimur by order dated 11.08.2010 on reaching a conclusion that the pre-emption application was barred by limitation and that the two purchasers were full brothers became adjoining raiyat themselves. The revisional authority concurred with the finding of the appellate authority and dismissed the revision petition of Respondent



No.10 by an order dated 21.11.2017. Against the said order dated 21.11.2017, two cases before the Bihar Land Tribunal were filed by Respondent No.10 giving rise to BLT Case No. 232 of 2018 and BLT Case No. 233 of 2018, both of which were heard together and have been allowed by the impugned order dated 19.12.2018.

4. Assailing the impugned order, Mr. Sunil Kumar, learned Counsel appearing on behalf of the petitioner has submitted that the Tribunal has committed an error of law by not appreciating the fact that the vendors, Respondent Nos. 6 to 9, had in fact approached Respondent No.10 first expressing their willingness to sell the land to him but since Respondent No.10 declined, the vendors did not have any choice other than to sell the land in favour of the petitioner and his brother, who will willing to purchase. This aspect has been specifically considered by the learned Chairman of the Tribunal and it has been recorded that such claim is not corroborated by any cogent materials on record nor there is any affidavit in this regard, by the vendors who chose not to appear in the proceedings.



5. Mr. Kumar has secondly submitted that out of the total area of 2.24 acres appertaining to Khata No. 70, Ploat No. 3566 situate at Mauza- Mukhrawan in the District of Kaimur, which has been the subject matter of the pre-emption proceeding, the petitioner had purchased half of the land admeasuring 1.12 acres and the rest 1.12 acres was purchased by the petitioner's brother who was residing jointly with the petitioner. It is his contention, on that basis that petitioner's brother, his co-sharer became an adjoining raiyat after purchase of half of the land adjacent to the petitioner's land and for the said reason also, claim of pre-emption of Respondent No.10 was unsustainable. The aforesaid submission is not at all sustainable, in view of the clear language of Section 16(3) of the Act as the same stood prior to its repeal with effect from 25.01.2019. The claim of Respondent No.10 of being adjoining raiyat on the date of registration of the sale deeds is a fact which undeniable. The vendees were admittedly not the co-sharers nor adjoining raiyat of the transferor. In that background, the Respondent No.10 was entitled to make an application within three months of the date of the registration of the



document of transfer, for transfer of the land to him, on the terms and conditions contained in the said deed. This argument of Mr. Kumar, learned counsel for the petitioner cannot be accepted and is, accordingly, rejected.

6. Mr. Sunil Kumar, has further argued that there has been a delay in filing of the pre-emption application inasmuch as the sale deed was executed on 30.08.1999 whereas the pre-emption application came to be filed seven years thereafter.

7. Adverting to this submission, I must take note of another undeniable fact that the sale deeds were registered on 25.01.2006 and the pre-emption application was filed within three months of the said date after complying with the requirement of Section 16(3) of the Act. The learned Chairman of the Tribunal has rightly held, in the light of the clear language of Section 16(3) of the Act, that the date of registration of the document would be the determinative factor for calculating the time within which the pre-emption application should be filed by a co-sharer or adjoining raiyat before the competent authority. The date of



registration of the sale deed is the starting point of limitation for filing pre-emption application. The law laid down in this regard by the Supreme Court in case of **Hira Lal Agrawal Vs. Rampadarath singh (AIR 1969 SC 244)** is unambiguous and has been rightly noticed by learned Chairman in his impugned judgment and order. There is no legal infirmity in the conclusion arrived at by the learned Chairman of the Tribunal that the revisional authority was wrong while holding that the pre-emption application was barred by limitation and that such right could have been defeated by the purchasers on the ground of having acquired adjoining status. Learned Chairman of the Tribunal has rightly noticed this Court's decision in case of **Radha Mohan Sharma and others Vs. State of Bihar and another** reported in **2008(4) PLJR 409**, wherein it has been held that purchase of the two parts of the same plot on the same date from the same vendor by the same person or by two others could not be enough to decline pre-emption rights of a person, claiming himself to be the adjoining raiyat of the entire plot. The impugned judgment and order of the Tribunal, thus



does not suffer from any illegality, requiring this Court's interference.

8. Mr. Sunil Kumar, has lastly referred to Section 2 of the Amendment Act, 2019, whereby Section 16(3) of the Act has been repealed and has submitted that now the decision of the Tribunal cannot be given effect to, in view of the aforesaid provision and only purchase money together with a sum equal to 10% thereof already legally deposited under proviso to Section 16(3) of the Act is required to be refunded. The aforesaid submission cannot be accepted.

9. By virtue of Section 2 of the Amendment Act, 2019, sub-section(3) of Section 16 has been repealed and a new sub-section (4) has been added, which has two sub-clauses, (i) and (ii). Clause (i) of added sub-section(4) provides for abatement all proceedings before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court. Apparently, by operation of clause (i) of sub-section (4) of Section 16 of the Ceiling Act, such



proceedings which were pending before the Government/authorities/Tribunal/Court as on the date of coming into force of the Act shall be deemed to have abated and as consequence of the abatement of the proceedings, sub-clause (ii) provides refund of the purchase money together with a sum equal to 10% thereof, already legally deposited. In the present case, before coming into force of the repeal Act, the respective rights of the parties had already crystallized up to the level of the Tribunal, which in my opinion, cannot be altered or taken away by applying the provisions of the repeal Act.

10. Situated thus, I do not find any merit in this application.

11. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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