

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7558 of 2019

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1. Kalyan Jee Son of Parmanand Prasad Singh Resident of Village- Belwar, P.S. Vaishali, District- Vaishali.
 2. Anand Jee Son of Parmanand Prasad Singh Resident of Village- Belwar, P.S. Vaishali, District- Vaishali.

... .. Petitioners

Versus

1. The State of Bihar
2. The Chairman, Bihar Land Tribunal , Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The Additional Collector, Vaishali at Hajipur.
5. The Deputy Collector Land Reforms (DCLR), Vaishali at Hajipur.
6. Rajendra Singh Son of Anirudh Singh Resident of Village and P.O. Belwar, P.S. and District- Vaishali.
7. Smt. Kanti Kumari Sinha Wife of Sri Bindeshwari Prasad Singh Resident of Village Paharpur Chak Ahlad, P.O. Manien, P.S. Sahebganj, District- Muzaffarpur.
8. Smt. Shanti Kumari Sinha, Wife of Sri Shatrughan Prasad Singh Resident of Village Mohammadpur Damodar, P.O. Mohammadpur, P.S. Sakra, District- Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Shashi Shekhar Dvivedi, Senior Advocate Mr. Parth Gaurav, Advocate
For the Respondent State:		Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 22-04-2019 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’), as the same existed prior to repeal of the said provision, reads thus :-

“Section 16 (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.”

2. The said provision has been repealed by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019 (hereinafter referred to as ‘the Amendment Act, 2019’) (Bihar Act 6, 2019) by Section 2 thereof, which reads thus: -



“2. (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 has come into effect from the date of its publication in Bihar Gazette (Extraordinary), i.e., 25.02.2019.

4. The petitioners, in the present writ application, have put to challenge a judgment and order dated 18.09.2018 passed by the learned Chairman, Bihar Land Tribunal, Patna, in B.L.T. Case No.157 of 2017, whereby an application of these petitioners seeking quashing of a revisional order in a preemption matter under Section 16(3) of the Act has been dismissed.

5. In the preemption proceeding, initiated by



respondent No.6 herein, before the Deputy Collector Land Reforms in the year 2002-03, the petitioners were the purchasers of the land, which was subject matter of the said proceeding. The petitioners had purchased 1.34 acres of land through a sale deed executed by respondents No.7 and 8 herein. Respondent No. 6 filed his preemption application claiming himself to be the adjoining raiyat and also co-sharer of the vended land. This is not in dispute that the claim of preemption was resisted by the petitioners mainly on the ground that the petitioners had purchased other lands by sale deed executed on 05.11.2002 and 08.11.2002, during the pendency of the preemption application and they, according to them, thus, acquired the status of adjoining raiyat of the vended land. The Deputy Collector, Land Reforms, sustained the objection of the petitioners apparently on the ground that since the preemptor as well as the purchasers were adjoining raiyats, claim of preemption could not be allowed.

6. An appeal preferred by respondent No.6 before the Collector, Vaishali, giving rise to Land Ceiling Appeal No.R-135 of 2002-03/76 of 2010-11, failed with its dismissal by an order dated 05.02.2016. This led to filing of revision application before the Divisional Commissioner, Tirhut Division,



Muzaffarpur, by respondent No.6. The Divisional Commissioner, by order dated 07.02.2016, allowed the revision application, rejecting the claim of the petitioners of having acquired status of adjoining raiyat during the pendency of the preemption proceeding by subsequent purchase of adjacent lands through two sale-deeds, for defeating the claim of preemption of respondent No.6. The said order of the Divisional Commissioner passed in his revisional jurisdiction was assailed by the petitioners before Bihar Land Tribunal, giving rise to B.L.T. Case No.157 of 2017, which came to be dismissed by the impugned order dated 18.09.2018.

7. I have heard Mr. Shashi Shekhar Dvivedi, learned Senior Counsel appearing on behalf of the petitioners.

8. Mr. Dvivedi, learned Senior Counsel has, with reference to the Amendment Act, 2019, has submitted that since provision under Section 16(3) of the Act itself has been repealed, the impugned order has become redundant, as according to him, Section 16(3) of the Act stands completely wiped out from the very beginning and in view of Section 2 of the Amendment Act, 2019, respondent No.6 is entitled for return of the amount, which he had deposited. He has relied on a Supreme Court's decision, in case of *Kolhapur Canesugar*



Works Ltd. and Ors. vs. Union of India (UOI) and Ors., (AIR 2000 SC 811), with reference to paragraphs 38 and 39 thereof, to contend that in view of the repeal of the said provision, neither the order of the revisional authority nor the order of the Tribunal is to be given effect to.

9. Though, such oral submission has been made on behalf of the petitioners, no such plea has been taken in the writ application. The petitioners, in the writ application, have just put to challenge the legality of the order passed by the learned Chairman, Bihar Land Tribunal. I will deal with the submission of Mr. Dvivedi on the consequence of repeal briefly after I deal with his challenge to the order impugned.

10. There are eight grounds taken in the writ application, including the ground that the petitioners were landless and that it was obligatory on the part of the preemptor to have contended and averred that he did not hold more area than the ceiling area while lodging his claim for preemption.

11. On careful scrutiny of the pleadings in the writ application, it can be easily noticed that indisputably the respondent No.6 was not only adjoining raiyat but also the co-sharer of the vendor. It is also evident that the only ground to resist the claim of preemption taken by the petitioners, which



was sustained by the original authority and the appellate authority, was that they had acquired status of adjoining raiyat on the strength of subsequent purchases made by them during the preemption proceeding. It is manifest from the impugned order also that respondent No.5 had taken specific stand before the Tribunal by reading out the reply filed by the petitioners before the Deputy Collector Land Reforms to substantiate his stand that there was complete absence of denial of status of respondent No.6, the preemptor, as co-sharer and adjoining raiyat.

12. Learned Chairman of the Tribunal, referring to the Full Bench decision of this Court in case of ***Padmraj Samarendra and others v. State of Bihar and another (FB)***, reported in **AIR 1979 Pat 266**, has upheld the reasoning assigned by the revisional authority for sustaining the claim of preemption that the crucial date for determination of claim of preemption would be the date of filing of preemption application. The view taken by the Tribunal is unexceptionable and is evidently in conformity with the Full Bench decision in case of ***Padmraj Samarendra*** (supra).

13. The judgment and order impugned, therefore, does not suffer from any legal or factual infirmity and does not



require interference by this Court.

14. As regards the repeal of Section 16(3) of the Act, Mr. Dvivedi, referring to language of sub-section (2) of Section 2 of the Amendment Act, 2019, has made somewhat unusual submission. He has contended that by operation of the said provision all proceedings abated including the present proceeding. The submission is not worthy of even consideration. This writ application was filed on 10.04.2019 after coming into force of the Amendment Act, 2019, which deals with all cases or proceedings pending before 'the State Government, the Board of Revenue, the Bihar Land Tribunal, the Collector, the Additional Collector, the Deputy Collector Land Reforms or any other Court'.

15. Firstly, a proceeding, pending under Article 226 of the Constitution of India in the High Court arising out of a preemption proceeding, will not abate and cannot abate by operation of Section 2 of the Amendment Act, 2019. Secondly, if, according to him, the proceedings before this Court would also abate by operation of Section 2 of the Amendment Act, 2019, what was the purpose of filing the present writ application is a question, which he himself can answer.

16. In my opinion, however, it is true that a statute,



after its repeal, is as completely obliterated as if it had never been enacted except as to the transactions past and closed. Rights of the respective parties in the present case came to be finally adjudicated upon under the provisions of the Act before coming into force of the repeal Act of 2019. The rights, finally crystallized under Section 16(3) of the Act, cannot be said to be taken away by applying the provisions of the Amendment Act of 2019.

17. This application has no merit. It is accordingly dismissed.

18. However, there shall be no order as to cost.

(Chakradhari Sharan Singh, J)

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