

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18620 of 2011

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Sheo Dulari Devi, Wife of Sri Ganga Prasad Mukhiya, Resident of Village -
Malsar at present Chhechhani P.S. Bithan, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Samastipur
2. The Land Reforms Deputy Collector, Rosera at and P.O. - Rosera Distt-
Samastipur
3. Jageshwar Prasad Yadav, Son of Late Garib Nandan Yadav, Resident of
Village - Chhechhani P.O. - Belsandi P.S.- Bithan, District - Samastipur
4. Most. Janaki Devi, Wife of Late Ram Dhani Mukhiya, Resident of Village -
Chhechhani P.S. Bithan, District - Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uma Shankar Singh
For the Respondent/s : Mr.P.K. Verma AAG-5

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 16-08-2019

Heard learned counsel for the parties.

2. This writ application has been filed seeking quashing
of order dated 11.12.2008, passed by the Deputy Collector Land
Reforms, Rosera, Samastipur in Ceiling Case No. 05 of 2008
whereby he has allowed a pre-emption application under Section
16(3) of Bihar Land Reforms (Fixation of Ceiling Area and
Acquisition of Surplus Land) Act, 1961(hereinafter referred to as
'the Act') filed by respondent no. 3 herein and has directed the
petitioner to execute a sale-deed in favour of respondent no. 3 in
respect of the land which was subject-matter of the ceiling
proceeding.



3. An objection has been rejected at the very outset on behalf of respondent no. 3 over maintainability of the writ application on two grounds :-

(i) The petitioner has approached this Court against the order of the Deputy Collector Land Reforms without availing the alternative statutory remedy of appeal and revision before the appropriate authority.

(ii) Section 16(3) of the Act has been repealed and sub-section(4) has been added to Section 16 which provides for abatement of all proceedings pending before any authority, Tribunal or court, arising out of Section 16(3) of the Act.

4. I shall deal with the said two preliminary objections after taking note of the facts which are not in dispute. The petitioner had purchased 3 kathas and 13 dhurs of land in Village Chhechhani, Pargana Parari in the district of Samastipur out of Khata no. 46, Plot No. 309 and 310 old, new 449 through a sale-deed dated 06.01.2008 for total consideration of Rs. 27,500/-. It has been stated in paragraph-4 of the writ application that the petitioner is landless and she does not have any land save and except the said land purchased on 06.01.2008.

5. It transpires that respondent no. 3 filed a pre-emption application under Section 16(3) of the Act in respect of land in



question. It is specific case of the petitioner that no notice upon her was ever served in the pre-emption proceeding and in her absence an *ex parte* order was passed by the Deputy Collector Land Reforms dated 11.12.2008, which is under challenge in the present writ application.

6. Learned counsel for the petitioner has drawn my attention to the order dated 17.04.2008 to submit that on the very first day, when the matter was taken up by the learned Deputy Collector Land Reforms exercising power under Section 16(3)(ii) of the Act, he handed over possession of the land to respondent no. 3 without any notice to the petitioner. After having allowed the claim of pre-emption in favour of respondent no. 3, by order dated 11.12.2008, sale-deed has also been executed in favour of respondent no. 3 by the Deputy Collector Land Reforms himself in terms of Section 13(3)(iii), of the Act on the ground that the petitioner had neglected/refused to comply with the direction to execute sale-deed in compliance of the order dated 11.12.2008.

7. Mr. Uma Shankar Singh, learned counsel appearing on behalf of the petitioner has taken me to the order-sheet maintained in the court of learned Deputy Collector Land Reforms in Land Ceiling Case No. 05 of 2008 to contend that no order indicates actual service of notice on the petitioner though there is



reference of issuance of notices. He has further submitted that even the impugned order, which is *ex parte*, does not indicate that the notice was in fact served upon the petitioner. He has accordingly submitted that the impugned order of the Deputy Collector Land Reforms is not only in violation of principles of natural justice, it is a clear breach of statutory provisions under Section 16(3) of the Act which mandates service of notice on the purchaser. He has also submitted that since the order impugned is, on the face of it, in breach of statutory provisions and principle of natural justice, existence of alternative remedy of appeal or revision may not come in way of the petitioner maintaining this writ application. He has further submitted that in view of the fact that now Section 16(3) of the Act has itself been repealed by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019, the right of pre-emption itself stands wiped off and, therefore, if this Court interferes with the impugned order, it would be an exercise in futility to remand the matter back to the revenue authorities.

8. Mr. S.N. Yadav, learned counsel appearing on behalf of respondent no. 3 has submitted with reference to the counter affidavit filed on behalf of respondent no. 3 that the petitioner is



not a landless lady, rather the petitioner's husband has got 1 and ½ katha of land in his share in a village called Malsar.

9. He has reiterated his submission on the point of maintainability of the writ application and has contended that as the petitioner failed to appear in the pre-emption proceeding, the Deputy Collector Land Reforms did not have any choice but to proceed *ex parte* and decide the petitioner's application in accordance with the provisions of the Act.

10. I have perused the impugned order and the order-sheet of the ceiling case, a copy of which has been brought on record by way of Annexure. In view of the undisputed facts disclosed in the writ application and not denied in the counter affidavit, I do not find any hesitation in reaching a definite conclusion that there is no material to show that any notice of the proceeding under Section 16(3) of the Act was ever served on the petitioner. In my view, without recording a satisfaction that the petitioner failed to appear in the pre-emption proceeding despite actual service of notice on her, the Deputy Collector Land Reforms could not have proceeded to decide the matter *ex parte*.

11. I do not find much strength in submission made on behalf of respondent no. 3 that this application cannot be maintained as the petitioner has not availed the statutory remedy of



appeal. Availability of alternative statutory remedy is not bar for this Court to maintain an application under Article 226 of the Constitution of India. This Court maintains a self-imposed restraint by not entertaining matters, when a litigant has any alternative remedy available. Once the Court is of the view that the action of the respondent is in violation of principle of natural justice, it would be just and proper for the Court to interfere with the matter despite there being statutory remedy available or not having been availed.

12. The submission made on behalf of respondent no. 3 that by operation of Section 16(4) of the Act, which has been recently added by virtue of amendment, this writ application should be declared to have abated. Section 16(4) talks about abatement of proceedings before the authorities and court, that cannot be read to mean proceedings under Article 226 of the Constitution pending before a High Court. By no legislation, a proceeding under Article 226 of the Constitution can be said to have abated.

13. In view of the above noted discussions, I have no other option but to interfere with the impugned order dated 11.12.2008 which is accordingly set aside. All actions consequential to said order dated 11.12.2008 are declared invalid



and inoperative. The consequences of quashing of the impugned order shall accordingly follow. This application is allowed.

14. Normally, after having quashed a quasi judicial order on the ground of violation of principles of natural justice, I would have remanded the matter back to the authority concerned, but in the present case, in view of repeal of Section 16(3) of the Act itself, I am of the view that it would be an exercise in futility, as has been argued by learned counsel for the petitioner.

15. It goes without saying that respondent no. 3 shall be entitled to refund of money which he had deposited at the time of making of his application under Section 16(3) of the Act.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2019
Transmission Date	NA

