

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12754 of 1999

1. NOOR HASAN KHAN @ NURUL HASAN Son of late Saghir Ahmad Khan, Resident of Village Bazoo Khurd, P.S. Mahanpur (Barachatty), District- Gaya.
- 2.1. Mushtari Khatoon, Widow of late Zubair Ahmad Khan, Resident of Village Bazoo Khurd, Police Station- Mohanpur Barachatty, District-Gaya.
- 2.2. Md. Shariful Hasan, Son of late Zubair Ahmad Khan, Resident of Village Bazoo Khurd, Police Station- Mohanpur Barachatty, District-Gaya.
- 2.3. Md. Sajauul Hasan, Son of late Zubair Ahmad Khan, Resident of Village Bazoo Khurd, Police Station- Mohanpur Barachatty, District-Gaya.
- 2.4. Shahru Khatoon, D/o of late Zubair Ahmad Khan, Resident of Village Bazoo Khurd, Police Station- Mohanpur Barachatty, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Collector, Gaya.
4. The Land Reforms Deputy Collector, Sherghati, District- Gaya.
- 5.1. Nasir Gani Khan, Son of late Nazmul Hoda Khan, Resident of Village Balukhurd, P.S. Mahanpur, P.S Barachatti, District- Gaya.
- 5.2. Md. Afser Khan, Son of late Najmul Hoda Khan, Resident of Village- Bajukhurd, P.S. Mahanpur, (Barachatti), District- Gaya.
- 5.3. Md. Sarwan Heyat Khan, Son of late Najmul Hoda Khan, Resident of Village- Bajukhurd, P.S. Mahanpur, (Barachatti), District- Gaya.
- 5.4. Farhat Khatoon, Wife of late Jaki Ahmed khan, Resident of Mohalla Jarha Garh Ambikapur District- Sarguja State Chhatisgarh.
- 5.5. Afrinkheanam Wife of Shahid Reza Khan, Resident of Mohalla- Sahdeourap , P.S. Magadh University, Bodhgaya, District- Gaya.
6. Shahnaaz Khanam, Wife of Najmul Hoda Khan, Resident of Village Bazoo Khurd, P.S. Mahanpur(Barachatty), District- Gaya.
7. Mahendra Prasad, Son of late Jeelal Mahto, Resident of Village Bumuar P.S. Mahanpur, P.O. Bumuar, District- Gaya.
8. Ratan Prasad, Son of late Jeelal Mahto, Resident of Village Bumuar P.S. Mahanpur, P.O. Bumuar, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Khatim Reza
For the State		Mr. Prabhakar Jha, GP 27
		Mr. Umesh Narayan Dubey
For respondent nos. 5 and 6		Mr. Gopaljee



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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 07-08-2019 Heard the learned counsel for the parties.

The petitioners have put to challenge an order dated 20.11.1995, passed by the learned Additional Member, Board of Revenue, Bihar in Case No. 460 of 1993, whereby he has set aside an order of the Additional Collector in an appeal arising out of a pre-emption proceeding and has upheld the judgment of the Deputy Collector Land Reforms, allowing the claim of pre-emption of respondent nos. 5 and 6.

This writ application was taken up on 05.03.2001, when an interim order was passed in the absence of respondent nos. 5 and 6 to the effect that the status quo, as existing on that day, with regard to the land in question, shall be maintained. Despite the said interim order of this Court dated 05.03.2001, it is the case of respondent nos. 5 and 6 that in the light of the order of the learned Additional Member, Board of Revenue, the land was re-conveyed to the pre-emptor with the execution of the sale deed on 09.05.2003, invoking Clause (iii) of sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short 'the Act').



In the background of the fact that there was an interim order passed on 05.03.2001, in the presence of the said respondents (pre-emptor), including the Collector, Gaya, Deputy Collector Land Reforms and respondent nos. 3 and 4, the execution of the sale deed, invoking the provision under Clause (iii) of sub-section (3) of Section 16 of the Act, is wholly illegal and such sale deed cannot affect the right of the petitioners.

It appears from the impugned order that the same has been passed *ex parte* in the absence of the purchasers/petitioners.

It has specifically been stated in paragraphs 14 and 17 of the writ application that no notice was ever served on them and therefore, they could not appear before the learned Additional Member Board of Revenue in the revisional proceeding.

In the counter affidavit filed on behalf of respondent nos. 5 and 6, this fact has been denied and it has been stated that the notice was issued to the petitioners and it is wrong to say that the petitioners did not have any knowledge about the case.

I have perused the counter affidavit and the specific averment made in paragraph 12 of the counter affidavit. Though there is averment that notices were issued to the petitioners,



there is no material to suggest that the notices were, in fact, served on them

Repelling the argument made on behalf of the petitioners that no notice was served and they had no knowledge about the revision application before the learned Additional Member, Board of Revenue, Mr. Gopaljee, learned counsel for respondent nos. 5 and 6 contends, referring to the order-sheet of the revision case that notices upon the petitioners were, in fact, served. The order-sheet of the revision proceeding has been brought on record by way of Annexure-6 to the writ application, from which it appears that the revision application was dismissed by an order dated 29.06.1994 for non-prosecution. The application was thereafter, however, restored to original file.

There is nothing on record to suggest that after the case was dismissed for default by order dated 29.06.1994, notices were ever issued to the petitioners. The petition was restored by an order dated 08.07.1994. The matter was placed for hearing on 10.08.1994 and on 10.08.1994, the petition was heard *ex parte* and the order was reserved. It transpires that the matter was again re-heard and thereafter the impugned order came to be passed. There is nothing on record to suggest that



after dismissal of the revision application for default, notices were ever issued to the petitioners. At least, the order-sheet does not indicate so.

In the background of the above-noted admitted facts, the order dated 20.11.1995, allowing the claim of pre-emption cannot be sustained and is accordingly set aside on the ground of principles of natural justice. Consequences of the quashing of the impugned order shall follow.

Normally, I would have remanded the matter back to the revisional authority to pass an order afresh, but in view of the recent development, with the repeal of Section 16(3) of the Act itself, no purpose would be served by remanding the matter back to the revisional authority.

This writ application is allowed with the observation, as above.

(Chakradhari Sharan Singh, J)

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