IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.872 of 2017
In
Civil Writ Jurisdiction Case No.22819 of 2011

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Smt. Rambha Singh Wife of Sri Niraj Kumar Singh, Resident of Village Madruni, Post office- Sadhuwa Police Station- Gopalpur, District- Bhagalpur.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Bhagalpur.
3. The Collector, Bhagalpur.
4. The D.C.L.R. Naugachia, Bhagalpur.
5. Most Savitri Devi, Wife of Late Kishan Mandal.
6. Bidhan Kumar Mandal, Son of Late Kishan Mandal.
7. Kundan Kumar Mandal, Son of Late Kishan Mandal.

   Respondents 5 to 7 are resident of village-Azampur Rangra P.S. Rangra, District-Bhagalpur.
8. Sri Anuradha Jha, Son of Late Tunilal Jha, Resident of Village- Kumodpur, Post Police Station- Gopalpur, District- Bhagalpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vishwanath Pd. Singh, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the Respondents No. 5, 6, 7	:	Mr. Asdul Mannan Khan, Advocate Mr. Binay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 03-12-2019

This appeal under Clause 10 of the Letters Patent, is directed against the judgment dated 03.04.2017 passed by learned Single Judge in C.W.J.C. No. 22819 of 2011 by which the order dated 15.06.2011 passed by the learned Commissioner, Bhagalpur in Revenue Revision Case No. 15/2010-11, order dated 17.06.2010 passed by the Collector, Bhagalpur in Pre-emption Appeal No. 25/2006-07 as well and the order dated 28.07.2006 passed by the Deputy Collector Land Reforms, Naugachia in Pre-emption Case No. 04/2005-06/12 of 2006-07, have been quashed and the matter has been remitted back to the court of Deputy Collector Land Reforms, Naugachia to pass order afresh after taking the evidence from both sides and after making spot inspection of the plot in question.

2. Mr. Vishwanath Prasad Singh, learned Senior Counsel appearing for the appellant submitted that the learned Single Judge has passed the order without looking into the recital of the sale deed, in which the occupation of the appellant is mentioned as housewife. He has failed to appreciate that the appellant is a landless lady. He has further failed to appreciate that the land in question was purchased for commercial purpose for stalling Petrol Pump by the appellant for her livelihood and the nature of land is not agricultural or horticultural or homestead rather the same is commercial. His further contention is that the learned Single Judge did not appreciate that the private respondents are not co-sharers and adjacent raiyats of the land in question. They did not produce any evidence regarding their claim of pre-emption before the Deputy

Collector Land Reforms, Naugachia. Having made the aforesaid submissions, learned Senior Counsel has drawn our attention towards the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019, (for short 'The Amendment Act, 2019') by which sub-Section-(3) of Section-16 has been added. He contended that in view of the Amendment Act, 2019, all proceedings under sub-Section-(3) of Section 16 pending before the different authorities shall be deemed to be abated. In that view of the matter, no application under sub-Section-(3) of Section 16 of the Bihar Land Ceiling Act, 1961 shall be maintainable.

3. Mr. Abdul Mannan Khan, learned advocate appearing for the respondents no. 5 to 7 submitted that the Amendment Act, 2019 came into effect after the order impugned dated 03.04.2017 was passed by learned Single Judge. In that view of the matter, the order impugned cannot be held to be bad. He has further contended that since the findings of the authorities in the court below was based merely on the pleadings of the appellant, the learned Single Judge rightly allowed the writ petition by quashing the orders passed by the Deputy Collector Land Reforms, the Collector, Bhagalpur as well as Commissioner, Bhagalpur.

4. We have heard the parties and perused the record.

5. It would be evident from the record that there is concurrent findings of fact of three Revenue Authorities i.e., the Deputy Collector Land Reforms, the Collector and the Commissioner. The appellant, who is the purchaser of the land in question had filed her show cause before the Deputy Collector Land Reforms, wherein she had pleaded that the pre-emptor holds no land adjoining to the land in question. She had pleaded that in the sale deed, her occupation has been shown as housewife and she holds no other land. She had further pleaded that she had purchased the land for earning her livelihood by establishing a retail outlet of ESSAR Oil Company and the company had accepted her proposal and approved the plot in question which was purchased by her. The appellant had pleaded that the land in question is suited for commercial purpose and the nature of land is not agricultural nor it is used for horticulture or homestead land and since the nature of the land has been changed, the pre-emption case is not maintainable. In support of her contention, she had also brought on record documentary evidences. The respondents nos. 5, 6 and 7 who had filed the pre-emption case had failed to lead any evidence to negate the contentions of the appellant.

6. Considering the facts and circumstances of the case, the learned DCLR, Naugachiya vide his order dated 28.07.2006 passed in Pre-emption Case No. 04/2005-06/12 of 2006-07, dismissed the pre-emption application. In pre-emption appeal before the Collector, also the parties were heard and vide order dated 17.06.2010, the appeal was dismissed. The Revision preferred by the respondents no. 5 to 7 was also dismissed by the learned Commissioner vide order dated 15.06.2011 after hearing the parties and the orders passed by the learned Collector, Bhagalpur and the DCLR, Naugachiya were upheld.

7. In view of the factual findings recorded by the three Revenue Authorities, which were consistent, the scope of interference in extraordinary writ jurisdiction was very limited. Unless the authorities would misdirected themselves in appreciating the evidence or would have based their findings on consideration of inadmissible evidence or on ignoring material evidence, the writ court would not interfere with the finding.

8. We are of the opinion that on the facts and in the circumstances, no case for interference was made out in the writ petition. The learned Single Judge while passing the impugned judgment wrongly held that the impugned orders were passed only on the basis of pleadings of the appellant.

9. In that view of the matter, we are of the opinion that the judgment dated 03.04.2017 passed by the learned Single Judge cannot be sustained.

10. Accordingly, the impugned judgment dated 03.04.2017 passed by learned Single Judge is set aside. C.W.J.C. No. 22819 of 2011 stands dismissed. The appeal stands allowed.

11. Before parting, we would like to add that even otherwise, in view of the amendment Act, 2019, whereby sub-Section-(3) of Section-16 of the Bihar Land Ceiling Act, 1961 has been repealed and sub-Section-(4) has been added in Section 16, an application under Section 16(3) of the Act would not be maintainable before the Revenue Authorities anymore.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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