IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13383 of 2019

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Rajesh Kumar Mishra S/o Shrikant Mishra R/o Village- Madhomath, P.O.- Bathua Bazar, P.S.- Phoolwaria, District- Gopalganj.

... ... Petitioner

Versus

1. The State of Bihar through the Collector of the district, Gopalganj.
2. Hare Ram Mishra Son of Late Bishundeo Mishra R/o Village- Madhomath, P.O.- Bathua Bazar, P.S.- Phoolwaria, District- Gopalganj.
3. Shriman Narayan Mishra Son of Late Bishundeo Mishra R/o Village- Madhomath, P.O.- Bathua Bazar, P.S.- Phoolwaria, District- Gopalganj.
4. Ashutosh Kumar Mishra S/o Shrikant Mishra R/o Village- Madhomath, P.O.- Bathua Bazar, P.S.- Phoolwaria, District- Gopalganj.
5. Madan Choubey S/o Hari Shankar Choubey R/o Village- Bhopalpur, P.O.- Karwatahi, P.S.- Kuchaikote, District- Gopalganj.
6. Rajmati Kunwar W/o Late Tiha Ram Choubey R/o Village- Bhopalpur, P.O.- Karwatahi, P.S.- Kuchaikote, District- Gopalganj.
7. Girija Kunwar W/o Kanhaiya Choubey R/o Village- Bhopalpur, P.O.- Karwatahi, P.S.- Kuchaikote, District- Gopalganj.

... ... Respondents

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Appearance :

For the Petitioner : Mr. Ajay Mishra
Mr. Baidya Nath Thakur

For the Respondent State: Mr. Fakhruddin Ali Ahmad, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 17-07-2019 This application has been filed by the petitioner, who was a preemptor, in a proceeding under 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’), challenging an order, dated 17.01.2019, passed by the learned Chairman, Bihar Land Tribunal, Patna, in B.L.T. Case No. 64 of 2016, whereby the claim of preemption, which was allowed by the revenue authorities, has been rejected and the order passed

by the revisional authority, whereby the claim of preemption was sustained, has been set aside.

Be it noted that Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 has since been repealed by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019. However, the said amendment has nothing to do with the challenge, which the petitioner has made in the present adjudication, against the order, which was passed on 17.01.2019 by the Tribunal.

This can be easily noticed from the impugned order that learned Chairman has recorded a definite finding, referring to and appreciating the evidence on record, that a specific plea was taken on behalf of the purchasers that they held and possessed land in the northern boundary of the vended land, which fact had been mentioned in the sale deed in question. Learned Chairman of the Tribunal has taken into account the fact that the revenue authorities did not delve into this crucial aspect of the matter, while allowing claim of preemption.

Learned Chairman of the Tribunal has taken into account the fact that the sale deed itself described the nature of the land as homestead and for that reason also the claim of preemption could not be maintained.

It is also evident that the application for preemption was filed belatedly and there was an application filed on behalf of the petitioner/preemptor seeking condonation of delay. Without dealing with the said limitation petition, the Deputy Collector Land Reforms had allowed the petitioner's claim of preemption. This was the additional reason why the Tribunal interfered with the orders passed by the revenue authorities under the Act.

Mr. Baidyanath Thakur, learned counsel appearing on behalf of the petitioner, has submitted that the provisions of Section 16(3) of the Act apply even in respect of homestead land, as the definition of land, falling under Section 2(f), is not confined to agricultural or horticultural land alone, but extends to homestead land too. He has submitted that learned Chairman has wrongly held that a homestead land does not fall within the ambit of Section 16(3) of the Act.

I do not find any infirmity in the impugned order for reason that the land, as defined under Section 2(f) of the Act, means land, which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhur or pasturage or forest land or 'the homestead of land-holder'. Explanation-I to sub-Section (f) of Section 2 defines homestead as a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building and includes any outbuilding 'for the purpose connected with agriculture or horticulture'. So as to make out a claim, under Section 16(3) of the Act, of preemption in respect of homestead land, it is imperative for the premptor to establish that use of the land in question is homestead connected with agriculture or horticulture. There is nothing on record to support the claim of preemption. The revenue authorities have misdirected themselves while dealing with the nature of the case for the purpose of determining claim of preemption that there was no house existing over the land. The land can come within the definition of land under Section 2(f) of the Act only if it is established that the same is capable of being used for agriculture or horticulture purpose. Evidently, there was no building over the land in question as dwelling unit, for the purpose connected with agriculture or horticulture.

In view of the above, I do not find any such illegality in the impugned order of the Chairman, which would require this Court's interference.

This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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