

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.434 of 2019

In

Civil Writ Jurisdiction Case No.2706 of 2019

=====

Mahesh Thakur, male, aged about 51 years, Son of Ganaur Thakur, Resident of Village- Kishun Nagar, P.O.- Sain, P.S.- Vaishali (O.P. Belsar), District- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Additional Collector, Vaishali at Hajipur.
4. The Dy. Collector, Land Reforms, Vaishali at Hajipur.
5. Baidyanath Thakur, Son of Late Chandradeep Thakur, Resident of Village- Kishun Nagar, P.O.- Sain, P.S.- Vaishali (O.P. Belsar), District- Vaishali.
6. Nand Kishore Chaudhary, Son of Late Jamun Chaudhary, Resident of Village- Kishun Nagar, P.O.- Sain, P.S.- Vaishali (O.P. Belsar), District- Vaishali.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Keshav Srivatava, Sr. Adv.

Mr. Bhubneshwar Prasad, Adv.

For the Respondent Nos. 5 & 6 : Mr. Srinandan Prasad Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-12-2022



Heard the learned counsel for the parties.

2. The challenge in the present appeal is to the order dated 15.02.2019 passed by a learned Single Judge in C.W.J.C. No. 2706 of 2019, whereby the plea of the appellant/purchaser has been rejected and the order passed by the Bihar Land Tribunal (B.L.T.) has been affirmed.

3. The appellant/purchaser had purchased 9.50 decimals of land of Plot (Khesra) No. 144 of Khata No. 10 in the district of Vaishali through sale-deed dated 31.03.2009 executed by Respondent No. 6.

4. The Respondent No. 5 sought to pre-empt such sale by filing an application under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (*in short the Bihar Act of 1961*) in the manner prescribed therein. His claim was resisted by the appellant on the ground that the transferred land was not an agricultural land and that it had been purchased for construction of a



residential house.

5. However, the claim of pre-emption was allowed by the Deputy Collector, Land Reforms by order dated 13.03.2020 passed in L.C. Case No. 2 of 2009. The vendor of the property, viz., the Respondent No. 6 was asked to transfer the land in favour of Respondent No. 5 on the terms and conditions contained in the sale-deed.

6. Against the afore-noted order of the Deputy Collector, Land Reforms, an appeal was preferred by the appellant/purchaser vide L.C. Appeal No. 127 of 2009-10 upon 144 of 2011-12. The order passed by the first authority was affirmed and the appeal was dismissed.

7. The appellant/purchaser, thereafter, preferred a revision before the Commissioner, Tirhut Division, Muzaffarpur vide Ceiling Pre-emption Revision Case No. 155 of 2011, which was allowed by order dated 03.02.2015. Consequently, the Respondent No.



5/pre-emptor approached the Bihar Land Tribunal (B.L.T.) *vide* B.L.T. Case No. 364 of 2016 against the afore-noted revisional order.

8. The Bihar Land Tribunal (B.L.T.) upheld the right of pre-emption by setting-aside the order passed in revision and restoring the orders passed by the first authority as well as the appellate authority.

9. This is how the matter has travelled at the instance of the appellant/purchaser to the High Court.

10. The learned Single Judge, *vide* his order impugned, affirmed the order passed by the Bihar Land Tribunal (B.L.T.), upholding the claim of pre-emption.

11. Hence, the present appeal.

12. We have noticed that the order impugned was passed on 15.02.2019, *i.e.*, before the law of pre-emption was changed and the provisions contained in Section 16 (3) of the Bihar Act of 1961 was repealed by the Bihar Amending Act, 2019, *w.e.f.*, 25.02.2019.

13. However, for all practical purposes, the



LPA Bench would also be included in the expression “all other Courts” occurring in Section 16 (4) of the amended Act of 1961.

14. For the afore-noted reason, we declare the proceeding to have abated.

15. However, what appears from the pleadings is that before the matter was taken by the appellant/purchaser to the revisional Court of the Commissioner, in compliance of the orders passed by the first and the second authority, the land in question was re-conveyed/transferred to Respondent No. 5.

16. The appellant/purchaser, however, contends that the provisions contained in Section 16 (4) (i) & (ii) of the Bihar Act of 1961 shall operate with full-force and the purchaser shall have the right over the land vended as immediately after the judgment passed by the learned Single Judge and during the pendency of this appeal, Section 16 (3), providing for pre-emption to a co-sharer and an adjoining *raiya*t had been repealed



and it was declared that all proceedings pending before any Court shall stand abated.

17. With respect to the contention of Respondent No. 5 that the land vended had already stood transferred in his name, thereby proceedings having been brought to a logical conclusion, was not correct as the re-conveyance had to be made by the purchaser and not by an authority of the State.

18. It has been submitted on behalf of the appellant/purchaser that the proceedings ought to have been kept pending till the parties exhausted all the remedies. Before the orders passed by the first and the second authority could be implemented, the authorities were required to await the outcome of the revision petition preferred by the appellant/purchaser. During the pendency of the revision petition, it has been urged, the land was transferred by way of a sale-deed dated 05.01.2012/09.01.2012, which document has been executed by the D.C.L.R.



19. In this context, the learned counsel for the appellant/purchaser has drawn the attention of this Court to the provisions contained in unamended Section 16 (3) of the Act of 1961 and has submitted that in case of the right of pre-emption having succeeded, the transferee would be required to re-convey the land in question in favour of the pre-emptor and the transferor but would be entitled to pocket the 10% of the purchased price deposited by the pre-emptor.

20. It has thus been submitted that the re-conveyance is not in terms of unamended Section 16 (3) of the Act of 1961 and, therefore, the same cannot be given effect to.

21. The law of pre-emption has undergone a sea change. The right of pre-emption has been taken away by repeal of Section 16 (3) of the unamended Act of 1961 and by virtue of the amendment Act of 1919 securing repeal, all proceedings pending before any Court would be declared to have abated.



22. In ***Smt. Manju Devi Vs. The State of Bihar and Ors.***; L.P.A. No. 1080 of 2019, arising out of C.W.J.C. No. 22063 of 2011, we had the occasion to analyze the existing and the amended law of pre-emption.

23. The repeal would have its effect if the proceeding is pending. For all practical purposes, with the re-conveyance of the land in question to the pre-emptor/Respondent No. 5, the proceedings would be deemed to have been concluded finally. Thus, with the abatement of the entire proceeding, the purchaser's right cannot be vindicated/rekindled by upsetting the apple-cart.

24. In ***Smt. Manju Devi (supra)***, we have held as follows:-

"76. After examining the elucidation of law in ***Shyam Sunder (supra)*** and ***K. Govindraj (supra)***, the Bench, in this instance, found that there was no gainsaying that the right of pre-emption was a maligned law and was absolutely



feudal, archaic and outmoded. If such right had been taken away and all proceedings pending before any authority were declared to have abated, including proceedings in any other Court, which expression was wide enough to include the Constitutional Courts, the claim of pre-emption itself failed as the issue stood abated.

77. The object of the Statute and the purpose to be achieved along with the express language of the amending Act was taken into account by the Supreme Court to allow the case of the purchasers, giving right to the pre-emptors to withdraw 10% of the amount deposited by them in terms of Section 16 (4) (ii) of the Bihar Act of 1961 in accordance with law.

78. It was argued before us that there still remains some ambiguity in the amending Act as to till what stage the case or proceeding would be deemed to be pending. If a pre-emptor, on losing his claim, does not part with the possession or the purchaser recalcitrantly does not reconvey the Title in the event of pre-emption being allowed, then whether the proceeding or the case would be deemed to have remained pending for it to abate.



79. This hypothetical situation would seldom arise and, therefore, the law ought not to guard for such eventualities.

80. We do not find any ambiguity with respect to the application and consequences of 16 (4) (i) and (ii) of the Bihar Act of 1961. The law does not contemplate of any disobedience to it and, therefore, it never gives rise to any litigation. Litigation arises only because of the attempt on the part of the people to evade the law or because of their cupidity and caducity. The ambiguity and defect is not of the law, but such eventuality would only arise if law is sought to be hood-winked.

81. For all practical purposes, a proceeding would remain pending till the time the transferee/purchaser is not put in possession of the land which he had purchased and which was hitherto in possession of the pre-emptor. We say so for the reason that the cause and right to pre-emption has been abrogated/deleted, giving primacy to the property right of the transferee/purchaser. Thus, even in execution proceedings before the concerned Court of the first instance, if possession has not been given or



conversely in case of pre-emptors not having been restituted and re-conveyed the Title, the proceeding would be viewed/categorized as pending for the right of the preemption to abate.

82. A concluded proceeding is when the purchaser is put in possession. Almost simultaneous would be the refund of the money deposited by the pre-emptor, which would include the purchase price + 10% thereof.

83. As we have noted, with the amendment Act and insertion of Section 16 (4) (i) and (ii) of the Bihar Act of 1961, such provision has been added. Previously, in case of tranferee's right being concretized, he was entitled to pocket the 10% of the purchase priced deposited by the pre-emptor. This makes the pointer of the balance dip in favour of the purchaser and the pre-emptor is compensated with the refund of the entire amount, *i.e.*, the purchased price + 10% thereof.

84. If there remains no ambiguity with respect to the stages or Courts - even Constitutional Courts where all pending proceedings or case would stand abated, there ought not to be any difficulty in



determining when the proceeding would stand finally concluded, thereby shutting out the application of the provisions of the amending Act, by which the right of pre-emption has been taken away. The stage when the amending Act would not be applicable is when the property has been re-conveyed to the pre-emptor or the money deposited by the pre-emptor has been refunded in either case of his success or defeat.

85. This was precisely the view of the Supreme Court in ***Punyadeo Sharma*** (*supra*)."

25. Since the land vended has already been re-transferred over which questions have been raised by the appellant/purchaser, the issue comes out of the application of the repeal of the pre-emption law. The contention of the appellant/purchaser with respect to wrong re-conveyance or re-conveyance not in terms of unamended Section 16 (3) of the Act of 1961, would be a collateral issue, which cannot be considered in the present proceeding.



26. Thus, with the declaration of the proceeding having abated, the concluded transaction in favour of the pre-emptor shall not be disturbed.

27. The appeal thus fails, but without any order as to costs.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	05.04.2022
Uploading Date	02.02.2023
Transmission Date	N/A

