

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1080 of 2019

In

Civil Writ Jurisdiction Case No.22063 of 2011

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Smt. Manju Devi, Wife of Ghanshyam Mandal, R/o Village-Rampur, P.S.-
Kahalgaon, District-Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Additional member, Board of Revenue, Bihar, Patna.
3. Additional Collector, Bhagalpur.
4. Deputy Collector, Land Reforms, Kahalgaon, Bhagalpur.
5. Raman Kumar, Son of Late Bibhash Chandra Mandal, R/o Village-Rampur, P.S.-Kahalgaon, District-Bhagalpur.
6. Shambhu Kumar, son of Late Bibhash Chandra Mandal, R/o Village-Rampur, P.S.-Kahalgaon, District-Bhagalpur.
7. Hari Mohan, Son of Late Shiv Narayan Mandal, R/o Village-Rampur, P.S.-Kahalgaon, District-Bhagalpur.
8. Renu Devi, Wife of Late Janardan Mandal, R/o Village-Rampur, P.S.-Kahalgaon, District-Bhagalpur. At present residing at Village and P.O.-Birudiga (Via Pannagarh), District-Wardhman (W.B.)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Saurendra Pandey, Adv. Mr. Abinash Kumar, Adv.
For the Respondent/s	:	Md. Khurshid Alam (AAG-12)
For respondent nos. 5, 6 and 8 :	:	Mr. Mukesh Kumar Jha, Adv.

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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

1. Heard Mr. Saurendra Pandey, the learned Advocate for the appellant and Mr. Mukesh Kumar Jha, the learned Advocate for the respondent nos. 5, 6 and 8.
2. The respondent no. 7 is dead.
3. Here is an illustrious case, where, because of the operation of law, the appellant/purchaser performe succeeds only for the reason of delay in re-conveyance of the title in favour of the pre-emptor/respondent.
4. The appellant had purchased the property in question by a registered sale deed dated 18.10.1994. Shortly thereafter, a pre-emption application was filed by respondent nos. 5, 6 and 7 (respondent no. 7 died during the pendency of this appeal) but without depositing of the sale price plus 10 percent thereof



within time. The amount was deposited only on 22.03.1995 belatedly.

5. Mr. Pandey, the learned advocate for the appellant contends that in the first instance, the pre-emption proceeding ought not to have been triggered, for all conditions had to be satisfied before initiating such proceeding. Nonetheless, the pre-emption was entertained, but was ultimately dismissed on 16.08.1995.

6. Against the afore-mentioned order rejecting the claim of pre-emption, the pre-emptors/respondents preferred an appeal before the Collector, which was allowed on 28.5.1997.

7. After the pre-emption application was allowed in appeal, an application was filed before the L.R.D.C. for directing the appellant / purchaser to re-convey the property to them.

8. The proceedings remained pending, whereafter a revision petition was filed by the appellant / purchaser before the Board of Revenue vide Revision Petition No.



19 of 2002, which was dismissed for non-prosecution by order dated 21.10.2003.

9. Against the aforementioned order of dismissal of the revision petition, the appellant / purchaser preferred a writ petition before this Court vide C.W.J.C. No. 22063 of 2011, which also has been dismissed by the order impugned on grounds of laches.

10. The learned Single Judge vide his order dated 01.08.2019 passed in C.W.J.C. No. 22063 of 2011 has held that the writ petition by the purchaser could not be entertained as it was filed more than eight years after the passing of the order in revision, when the claim was dismissed for non-prosecution.

11. During the pendency of the writ petition, Section 16 (3) of the *Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961*(hereinafter after called the Bihar Act of 1961) was repealed and Section 16(4) (i) (ii) was inserted.

12. Admittedly, the property has not been re-conveyed to the pre-emptors/respondents herein by



the appellant. There could be laches on the part of the appellant and the delay at the level of the First Authority in executing the order passed in appeal, affirming the right of pre-emption by resorting to *Order 21 Rule 34 C.P.C.* but notwithstanding the aforesaid, for this fact alone, the weak right of pre-emption would have to go in favour of the purchaser / appellant.

13. In order to appreciate the afore-noted reasoning, it would be profitable to refer to the developments which have taken place in the law of pre-emption.

14. Section 16 (3) of the ***Bihar Act, 1961***, prior to its repeal, read as follows:-

16. Restriction on future acquisition by transfer, etc. -

(3) (i) *When any transfer of land is made after the commencement of the Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:*

Provided that no such application shall be entertained by the Collector unless the purchase



money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten per cent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.

15. The afore-noted provision was deleted by Bihar

Amendment Act of 2019 w.e.f. 25.02.2019.

16. Section 16 (4) (i) & (ii) was introduced by the

same amendment in the Act which reads as

hereunder:-

"(4) (i) *After the repeal of sub section-(3) of Section-16 of this Act, all cases or proceedings*



pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated.

(ii) Pursuant to the repeal of sub section-(3) of Section-16 of this Act, any purchase money together with a sum equal to 10% thereof, already legally deposited shall be refunded, without any interest, to the depositor."

17. The origins of right of pre-emption can be traced to the *Mohammadan Rule*, based solely on custom of vicinage. Such custom was prevalent mainly in north India, which was later codified by its incorporation in various statutes prior to coming into force of Constitution of India and thereafter as well.

18. In ***Bishan Singh and Ors. Vs. Khazan Singh and Anr.; AIR 1958 SC 830***, a Bench of four judges had the occasion to analyse the Punjab Pre-emption Act (1 of 1913). Hon'ble Justice K. Subba Rao, who had authored the judgment, referred to the exposition of law of pre-emption by Plowden J. in ***Dhani Nath Vs. Budhu (1)136 Pun. R.E. 1894 :***



"A preferential right to acquire land, belonging to another person upon the occasion of a transfer by the latter, does not appear to me to be either a right to or a right in that land. It is, jus ad rem alienum acquirendum and not a jus re aliena..... A right to the offer of a thing about to be sold is not identical with a right to the thing itself, and that is the primary right of the pre-emptor. The secondary right is to follow the thing sold, when sold without the proper offer to the pre-emptor, and to acquire it, if he thinks fit, in spite of the sale, made in disregard of his preferential right."

19. The passage quoted in the judgment led Justice Subba Rao to summarize that a pre-emptor had two rights; (1) inherent or primary right, i.e. a right to the offer of a thing about to be sold and (2) secondary or remedial right to follow the thing sold.

20. With respect to secondary or remedial right, reference was made to the judgment rendered by Mahmood J. in **Gobind Dayal Vs. Inayatullah; I.L.**

R. 7 All. 775 as follows:-

"It (right of pre-emption) is simply a right of sub-substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed



out and pre-emptor's name inserted in its place."

21. The secondary right of pre-emption was held to be only the right of substitution in place of the original vendee. A pre-emptor was thus held to be bound to show not only that his right is as good as the vendee (purchaser), but that it is superior to his.

22. It was consistently recognized by Courts that this superior right ought to subsist at the time when the pre-emptor exercises his right and that right is lost if by that time another person, with equal or superior right, has been substituted in place of original vendee.

23. The Bench, thereafter, continued as follows :

"Courts have not looked upon this right with great favour, presumably, for the reason that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To summarize: (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor



has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase, i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

24. In fact, the constitutionality of the pre-emption law was first questioned in ***Bhau Ram Vs. Baijnath; AIR 1962 SC 1476***, where Section 10 of the ***Rewa State Pre-emption Act, 1946*** (in short *the Rewa Act, 1946*) was tested on the anvil of Article 19 (1) of the Constitution of India. Section 10 of the Rewa Act, 1946 gave the right of pre-emption to any person, who was a co-sharer and partner in the property, sold and foreclosed. It further provided that any person, who owns any immovable property adjoining the property sold or foreclosed or in case of transfer of tenancy right, the



land which was the subject of such right, provided that among the above-mentioned classes, the first in order would exclude the second and among persons of same class, the nearer in relationship to the person whose property, sold or foreclosed, will exclude the more remote.

25. This second proviso was questioned by which a person owning immovable property adjoining the property, sold or foreclosed, was held entitled to pre-empt, subject to the order of preference provided in the proviso. In that case, both, the purchaser and the pre-emptor held property adjoining the property sold but as the pre-emptors were related to the vendor, while the purchaser was not, the suit was decreed in favour of the pre-emptor in view of such proviso.

26. The Bench was confronted with the question whether a right of pre-emption by vicinage offends Article 19 (1) of the Constitution of India.



27. The *Rewa Act, 1946* was, held to be not falling foul of the Article 19 (1) of the Constitution of India.
28. From the discussions in the judgment, what can surely be gleaned is that right to pre-emption was always treated to be a weak right and, therefore, any provision to enforce such a right required it to be strictly construed [***Barasat Eye Hospital thr. its Rep. Vs. Kaustabh Mondal, 2019 (19) SCC 677***].
29. After the Constitution of India was promulgated, the law of pre-emption earned a statutory status. Nonetheless, finding such law to be basically premised on the customary law of vicinage which in many respects was flawed, many States did not continue with such law and the respective statutes in various States were deleted/abrogated. This was however continued in few of the States including the State of Bihar only till recently. By the Amendment Act, referred to above, such right of pre-



emption stands deleted from the Bihar Act of 1961.

30. To resume the narrative with respect to amended provisions, namely, Section 16 (4) (i) & (ii) of the Bihar Act of 1961, it has been specifically stated that all cases or proceedings pending before the State Government, the Board of Revenue, the Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated.

31. Listing the forums and indicating that any case or proceeding pending in anyone of such forums would abate, clearly gives retrospectivity to the provision but such retrospectivity is limited to the stage till the issue remains pending at any of the afore-noted forums. It cannot, however, be construed to take away a finally concluded right, which would have, in the past, flown from the law of pre-emption.

32. Section 16 (4) (ii) further provides of a situation where the right of a pre-emptor stands



emasculated, requiring him to be refunded the purchase money along with a sum equal to 10% thereof, which he would have deposited in the past for initiating the pre-emption proceeding.

33. It may be noted here that under the pre-amended Section 16 (3) of the Bihar Act of 1961, if the pre-emption application was rejected, the transferee was to be restored the possession of the land in question and he only was entitled to be paid a sum equal to 10% of the purchased money out of the deposit made by the pre-emptor. However, as noticed, under the newly introduced Section 16 (4) (ii) of the Bihar Act of 1961, the entire money deposited by the pre-emptor, which is the purchase price+ 10% thereof, has been refunded to the pre-emptor. The clause further specifies that nothing except what was deposited would be refundable, meaning thereby that no interest shall be paid on such deposits, even if it remained with the State



Treasury for a long time. This further affirms that the amended provision has to be given retrospectivity till the time the proceedings are finally concluded and either of the parties, namely the purchaser or the pre-emptor becomes the owner of the property in question.

34. When would that stage come is the issue and determination of which, would govern the ambit of the amended provision.

35. The unamended Section 16 (3) of the Bihar Act, 1961, which has been extracted hereinabove, clearly stipulated that in the event of transfer of a land to a stranger, a co-sharer of the transferor or a *raiyat* holding an adjoining land would be entitled to trigger the pre-emption proceeding within three months from the date of registration of the transfer document, provided he would deposit the purchase money plus a sum equal to 10% thereof. The moment it is done, the pre-emptor earns a



temporary right of being put in possession of the land, irrespective of the pendency of the proceeding. If on final determination, the pre-emption move is rejected, the pre-emptor would be evicted from the land and possession would be restored to the transferee/purchaser. In this case, the transferee/purchaser gets the sum equal to 10% of the purchased money out of the total deposit made by the pre-emptor.

36. If the pre-emption application is allowed, the original transferee / purchaser would be asked by the Collector of the District to convey the land in favour of the pre-emptor by executing and registering a document of transfer within a period to be specified by the Collector and if he neglects or refuses to comply with the directions, the procedure prescribed in *Order 21, Rule 34 of the C.P.C. 1908*, would, as far as possible, be followed.

37. The pre-emption proceedings, thus, remain



pending before the Collector, for final execution and it remains pending till the time the collector directs the purchasers to execute and register the document in favour of the pre-emptor.

38. A recalcitrant purchaser may but delay such reconveyance.

39. Would the proceeding in that case be deemed to be continuing? If for any reason, the pre-emptor does not release the possession of the land in question, for the transferee to be put in possession, can the ground of absence of possession be construed as a pending proceeding?

40. These are the questions which have troubled us while deciding the cases related to pre-emption proceedings after its deletion from the Bihar Act of 1961. Which stage would be construed as "concluded proceedings" for the deletion or taking away of the right of pre-emption to affect it, thereby abating the proceedings.



41. In ***Shyam Sundar and Others Vs. Ram Kumar and Another; (2001) 8 SCC 24***, the Supreme Court was confronted with this issue.
42. In the *State of Haryana*, the parent Act, namely, the *Punjab Pre-emption Act, 1913* which was also applicable in the *State of Haryana* was amended by the *Haryana Amendment Act, 1995*, introducing Section 15, which declared that the right of pre-emption in respect of the sale of agricultural land and village immovable property shall vest in the tenant who holds under tenancy of the vendor or vendors, the land or the property sold or a part thereof.
43. In that case, the appellants were the purchasers. The purchase was sought to be pre-empted by the co-sharers of the transferors by filing a civil suit, which was decreed in favour of the pre-emptor and the first and second appeals at the instance of the purchaser had also failed. During the pendency of the appeal by the purchasers before the



Supreme Court, the parent Act of Punjab was amended and substituted by Section 15, as noted above.

44. The appellant/purchaser had argued that the very right of pre-emption having been extinguished by the substituted provision and the appeal being the continuation of the suit, the right of the pre-emptor must be declared to have failed. It was also urged before the Supreme Court that the amending act was only declaratory in nature and, therefore, there was no difficulty in giving it a retrospective effect.

45. The pre-emptors, however, contested the appeal and argued that pre-emptor was required to prove his right on the date of decree of the First Court and any loss of right after that date of decree by an act beyond his control or subsequent change in law would not affect the pre-emption claim. Since in the First Court, the pre-emption was allowed, the substituted Act will not affect it.



46. It was under this circumstance that the Supreme Court was called upon to decide two issues, viz., (i) whether an appeal being a continuation of the suit, the amendment in the parent Act, whereby the right of a pre-emptor was taken away during the pendency of the appeal, would affect his right in the ultimate analysis and (ii) whether the amending Act had retrospective operation so as to affect the rights of the parties in litigation.

47. The five-Judges' Bench, while dealing with the issue, found that the amending Act is only prospective in operation and, therefore, it does not affect the rights of the parties to the litigation on the date of adjudication of the pre-emption Suit and the appellate Court would not be required to take into account or give effect to the new provision introduced by the amending Act.

48. Thus, the claim of the purchaser was ultimately frustrated.



49. The Bench relied upon the statement of law in

Maxwell on the ***Interpretation of Statutes, 12th***

Edn.:

"Perhaps no rule of construction is more firmly established than thus - 'that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only'. The rule has, in fact, two aspects, for it, 'involves another and subordinate rule to the effect that a statute is not to be construed so as to have greater retrospective operation than its language renders necessary'."

50. The judgment also relied upon the statement of

law in ***Francis Bennion's Statutory***

Interpretation, 2nd Edn. :

"The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is



enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that lex prospicit non respicit (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated out, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law'."

51. Two other very interesting strands of arguments were raised by the appellants in **Shyam Sunder** (*supra*) before the Supreme Court. It was argued that since the amending Act was a beneficial legislation, retrospectivity would be implied in it. The supposition was that since the right of pre-emption is a feudal and archaic law, the amending Act, being a beneficial legislation, would have eventuated general benefit to the citizens.

52. This argument was repelled by holding that there is no such rule of construction that a beneficial legislation is always retrospective in operation even though such legislation, either expressly or by



necessary intendment, is not made retrospective.

53. The other argument was that since the amending Act is declaratory, therefore it shall have retroactive operation. The Bench culled out the legal principles that the function of a declaratory or explanatory Act is to supply an obvious omission or to clear up doubts as to meaning of the previous Act and such an Act comes into effect from the date of passing of the previous Act. On this proposition, the substituted Haryana provision was evaluated and it was found that the amending Act, neither expressly nor by necessary implication, intended to supply any omission or to clear up a doubt as to the meaning of the previous Section 15 of the parent Act. The previous Section 15 of the parent Act was precise, plain and simple. There was no ambiguity in it.

54. Thus, the claim of the appellants failed and it was conclusively held that the amending Act was prospective in operation which would not affect the



rights of the parties to litigation on the date of adjudication of pre-emption Suit and the appellate Court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.

55. However, from the discussions in the afore-noted judgment in ***Shyam Sunder*** (*supra*), there was but no underscoring of the position of law that a Statute which affected substantive rights is to be presumed prospective in operation, unless made retrospective, either expressly or by necessary intendment.

56. In ***Rafiquennessa Vs. Lal Bahadur Chetri***; ***AIR 1964 SC 1511***, which pertains to the bar on eviction of tenants brought about retrospectively by an amendment, it was declared :

"9. In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of statutory provision can be inferred



even in cases where such retro-active operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retro-active either when it is so declared by expressed terms, or the intention to make it retro-active clearly follows from the relevant words and the context in which they occur."

(emphasis provided)

57. Similarly in ***Dayawati Vs. Inderjit; AIR***

1966 SC 1423, the Supreme Court has held as

follows :

"10. Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke, whose maxim – a new law ought to be prospective, not retrospective in its operation – is oft-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance."

(emphasis provided)



58. This interpretation is time-tested and it was upheld in ***Darshan Singh Vs. Rampal Singh; 1992 Supp. (1) SCC 191***, wherein it was declared that "*Courts will construe a provision as conferring power to act retroactively when clear words are used*".

59. In this context, it would also be relevant to refer to the *General Clauses Act, 1897* and the *Bihar & Orissa General Clauses Act, 1971*, regarding the meaning of 'repeal'. The provisions contained in both the Acts are identical.

60. The *General Clauses Act, 1897* explains the effect of repeal.

61. On the repeal of any enactment, unless a different intention appears, it shall not –

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or



(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

62. Section 6A, which was inserted by Act 19 of 1936 in the *General Clauses Act, 1897*, it has been provided that :

[6A. Repeal of Act making textual amendment in Act or Regulation.]—Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

63. Section 7 further provides :



7. Revival of repealed enactments.—(1) *In any [Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.*

(2) *This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulation made on or after the fourteenth day of January, 1887.*

64. Section 16 (3) of the unamended Bihar Act of 1961 stood repealed by the Bihar Amendment Act of 2019 *w.e.f.* 25.02.2019, as referred to above. Section 16 (3) which concretized the right of pre-emption was abrogated and Section 16 (4) (i) and (ii) was added/inserted.

65. According to Section 6A of the General Clauses Act, 1897/the Bihar & Orissa General Clauses Act, 1917, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

66. To keep the issue stringing for further debate, deletion of Section 16 (3) and addition of Section 16



(4) in the Bihar Act of 1961 is neither promulgation of a declaratory Act nor the scope of Section 16 (4) can be said to be silent about its retro-active operation. The casement of Section 16 (4) (i) and (ii) expressly provide for retro-activity till the case or the proceeding before any forum is pending, which will be much beyond the forum of the First Court. This makes Section 16 (4) (i) and (ii), the newly inserted clause, declaratory.

67. In ***Shyam Sunder*** (*supra*), the Supreme Court had summarized the legal principle that the functions of a declaratory or explanatory Act is to supply an obvious omission or the clear-up doubts as to meaning of the previous Act and such an Act comes into affect from the date of passing of the previous Act, which has to be given retrospective effect.

68. What would constitute a concluded proceeding of pre-emption where Section 16 (4) (i) and (ii) of the Bihar Act of 1961 would not apply, requires



further expatiation.

69. The impact of the deletion of Section 16 (3) and introduction of Section 16 (4) in the Act of 1961 has been dealt with by the Supreme Court in ***Punyadeo Sharma & Ors. Etc. Vs. Kamla Devi & Ors. Etc.; 2022 (1) BLJ 434.***

70. In ***Punyadeo Sharma*** (*supra*), the First Authority had allowed the application for pre-emption on finding the pre-emptors to be adjoining co-sharers. The Appellate Court, *i.e.*, the District Collector, reversed the decision, which led the pre-emptors to approach the Board of Revenue, where the order of the Appellate Court/the Collector was set-aside and the order of the First Authority was restored.

71. This order was challenged by the purchasers before the High Court in C.W.J.C. No. 5018 of 2000, which was allowed, but the same was set-aside in L.P.A. No. 871 of 2004 by the Division Bench of this



Court, restoring the order of the First Authority. As such, the purchasers approached the Supreme Court.

72. Before the Supreme Court, the issue raised by the purchasers was that the sale-deed was presented for registration later and, therefore, the time for pre-emption application to be filed had to be counted from the date of sale till three months and not from the later date of registration (the L.P.A. Court had held that the statute provided counting of three months from the date of registration and not from sale). However, during the pendency of the appeal before the Supreme Court, Section 16 (3) was deleted and Section 16 (4) was added *w.e.f.* 25.02.2019.

73. It was urged on behalf of the purchasers/appellants before the Supreme Court that in terms of the newly inserted Section 16 (4) (i) of the Bihar Act of 1961, all cases pending at all stages abated. The expression "any other Court" in Section



16 (4) (i) would include Constitutional Courts, i.e., High Court or the Supreme Court.

74. Since the right of pre-emption itself stood extinguished and all proceedings were required to be abated, the right of the purchaser would have to be restored and the pre-emptors would be refunded the money.

75. The afore-noted contention was sought to be countervailed by the pre-emptors/respondents by relying upon ***Shyam Sunder (supra)*** and ***District Collector, Vellore District Vs. K. Govindaraj; (2016) 4 SCC 763***. It was argued that since the amending Act affected the substantive rights, it could not have been given retrospective operation.

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 re-convey 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 transferee's right being concretized, he was entitled to pocket the 10% of the purchase price 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*)

86. Based on the afore-noted analysis, we have no option but to set aside the order dated 01.08.2019 passed by the learned Single Judge in C.W.J.C. No. 22063 of 2011 and direct that necessary consequences would follow.

87. The appellant shall be put in possession of the property and the pre-emptor/respondents shall be refunded the purchase money plus 10 percent of the amount thereof, forthwith.

88. The appeal stands allowed and disposed of accordingly.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

sunilkumar/-
Praveen -II

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