

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.785 of 2017

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1. Dr. Sanjeev Kumar
 2. Rajeev Kumar Both are Sons of Late Subhash Chandra Yadav Both are Resident of Village-Narayanpur, P.S.-Bihpur, District-Bhagalpur
 3. Ranjana Kumari @ Ranjana Rani, Wife of Amrendra Kumar Yadav, daughter of Late Subhash Chandra Yadav, Resident of Village-Sultanpur Mahnar, P.S.-Mahnar, District-Vaishali at Hajipur
 4. Shanti Devi, Wife of Late Subhash Chandra Yadav Resident of Village--Narayanpur, P.S.-Bihpur, District-Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The DeputyCollector Land Reforms, Naugachhia, Bhagalpur
3. The Additional Collector, Bhagalpur
4. The Commissioner, Bhagalpur Division, Bhagalpur
5. Naina Kumari Rana, Wife of Dr. Ravindra Kumar Rana, Resident of Village-Narayanpur, P.S.-Bihpur, District-Bhagalpur
6. Devendra Singh
7. Janardan Singh Both are, Son of Madan Singh, Resident of Village-Balha, P.S.-Bihpur, District-Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Raj Kishore Roy, GP 18

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

- 2 12-05-2023 1. No one appears for the petitioner. Learned counsel for the respondent is present.
2. The petitioner in the instant application has prayed for the following relief(s) :-

(i) For the issuance of an appropriate writ in the nature of certiorari for quashing the order dated 28.10.2016 of Sri K. P. Ramaiah the learned



Member Administrative B. L. T. passed in B. L. T. Case No. 197/2013 whereunder the learned by which Member and without appreciating and considering the facts that father of the petitioner nos. 1 to 3 and husband of the petitioner no. 4 had purchased the land pertaining to Khata no. 717 part of Kheshera No. 5529, Area - 22.66 decimals through registered sale deed from the Vendors namely Devendra Singh and Janardan Singh, son of Madan Singh on 23.05.2006 for the construction of residential house over the plot in question and the nature of the land was mentioned in registered sale deed as "BASOBAS" (home stead) and the Pre-emption Case under section 16 (3) (1) of Bihar Land Reforms (Fixation of Ceiling Area And Acquisition of Surplus Land) Act 1961 hereinafter referred to as Ceiling Act is not maintainable against the home stead land (BASOBAS) in view of the full bench Judgment of Hon'ble Patna High Court reported in 1975 P.L.J.R.

(ii) To quash the order dated 01.10.2012 of the learned Commissioner, Bhagalpur Division, Bhagalpur passed in Bhagalpur Revenue (Land Ceiling) Revision Case No 8/2011-12 by which and whereunder the learned Commissioner has allowed the Revision Case filed on behalf of respondent no. 5 namely Naina Kumari Rana and set aside the order dated 19.12.2011 of the learned Additional Collector, Bhagalpur passed in L. C. Appeal No. 14/2009 2010 by which learned Additional



Collector, Bhagalpur the after hearing the parties was pleased to set aside the order dated 28.08.2009 of the learned Deputy Collector, Land Reforms, Naugachhia, hereinafter referred to as D.C.L.R., passed in L. C. Case No. 13/2006-2007 by which the learned D.C.L.R. had allowed the Pre-emption application filed by the Pre-emptor/respondent no. 5.

(iii) To quash the order dated 28.08.2009 of the learned D. C. L. R., Naugachhia passed in L. C. Case No. 13/2006-2007 by which the learned D. C. L. R., without appreciating and considering the facts that the nature of the land described in registered sale deed is "BASOBAS" (home stead) and the petitioners had purchased the land in - question from Devendra Singh and Janardan Singh, son of Madan Singh (the two equal share out of three brothers) for construction of residential house over the land in - question the said land is surrounded by dwelling houses of other persons and the Pre-emptor/respondent no. 5 is not a boundary Raiyat of the plot in- question.

(iv) For further direction to the respondents to restore the order dated 19.12.2011 of the learned Additional Collector, Bhagalpur passed in L. C. Appeal no. 14/2009-1010 and to mutate land in question in the name of the the land petitioners.

(v) For any other relief or reliefs for which the petitioners is found entitled to in the



facts and circumstances of the case.

3. At the outset it is submitted by learned counsel for the respondents-State that in view of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019 read with judgment of the Hon'ble Supreme Court in the case of **Punyadeo Sharma and Ors. Versus Kamla Devi and Ors.** reported in **2022(1) BLJ 434 (SC)**, the instant application which arises out of pre-emption application stands abated.

4. Relevant paragraphs of the aforesaid judgment in the case of **Punyadeo Sharma** (supra) is quoted hereinbelow:

“4. The question examined by the Division Bench of the High Court was whether an application for pre-emption was filed within three months of the registration as required by Section 16(3) of the Act or was it required to be filed within three months of the day of execution of the sale deed i.e. 9.2.1990. However, the said question does not survive for consideration in view of the subsequent development whereby the right of pre-emption itself has been taken away by the Bihar Act No. 6 of 2019 when the Act was amended. The Amending Act reads thus:

“The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)



(Amendment) Act, 2019

1. Short title, Extent and Commencement. – (1)

This Act may be called The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019.

(2) It shall extend to the whole of the State of Bihar.

(3) It shall come into force immediately.

2. Amendment in Section 16 of the Act, 1961. –

(1) Sub Section (3) of Section-16 of the said Act is hereby repealed.

(2) In the Section-16 of the said Act, the following new sub section-(4) shall be added:-

(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.

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7. We have heard the learned counsel for the parties and find that the right of pre-emption, after the Amending Act, abates as Sub-section 4(i) is specifically dealing with all pending proceedings before whatsoever forum. Therefore, the right of pre-emption will stand abated on and after 25.2.2019 including the proceedings which were pending before any forum.

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12. Any other Court is wide enough to include the Constitutional Courts i.e. the High Court and the Supreme Court.
Thus, keeping in view the object of the Statute, purpose to be achieved and the express language of the Amending Act, all proceedings of pre-emption under the Act pending before any authority under the Act or before any Court shall stand abated.

13. Consequently, the present appeals are allowed. The entire pre-emption proceedings stand abated. It shall be open to the respondents to withdraw 10% of the amount deposited by them in terms of Section 16 of the Act in accordance with law.” (Emphasis Supplied)



5. In view of the above, it is ordered that the instant application stands abated.

6. It is further directed that in terms of the aforesaid order, it shall be open to the pre-emptor herein to withdraw the amount deposited by him in terms of section 16 of the Act in accordance with law.

7. The application stands disposed of as having abated.

(Partha Sarthy, J)

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