

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14313 of 2017

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Nilofer Jahan wife of Afzal Wadood Khan Resident of Village - Sahdeo Khap,
P.S. Magadh University, Bodh Gaya, District - Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya.
3. The Collector-cum-District Magistrate, Gaya.
4. The Additional Collector, Gaya.
5. The Deputy Collector, Land Reforms, Gaya.
6. Niraj Morya Son of Prabhu Nandan Prasad Resident of Mohalla New Area,
Bisar Gaya, P.S. Civil Lines, Town and District - Gaya through his
contituted Attorney Sri Prabhu Nandan Prasad son of late Jhaman Prasad,
Resident of New Area, Bisar, Gaya.
7. Md. Zahid Khan S/o Late Md. Shahanwaz Khan both sons of Md. Sohjaha
Khan Resident of Mohalla Kathokar Talab, Bari Road, P.S. Civil Lines,
Town and District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14
For the Respondents	:	Mr. J.S. Arora, Sr. Advocate

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

2 06-08-2024 Heard learned counsel for the parties.

2. In the instant application, the petitioner has prayed for
the following relief(s):-

*“ I. For issuance of an order, direction
or writ of certiorari for quashing and
setting aside the order dated 02.08.2017
passed by the learned Bihar Land Tribunal,
Patna in B.L.T. Case No. 712 of 2016
whereby and where under the application*



filed by the respondent no. 6 against the order dated 25.05.2016 passed by the Commissioner, Magadh Division, Gaya in Ceiling Case No. 313 of 2013 has been allowed and the claim of the petitioner for pre-emption under Section 16 (3) of the Bihar Land Ceiling Act 1961 has been rejected.

ii. For issuance of an order or a writ of mandamus for allowing the application filed by the petitioner under Section 16(3) and further for directing the respondent authorities to put the petitioner in possession of the landed property admeasuring two acres 176 and 1½ decimals in the village of Sahdeo Khap, Thana No. 428, Anchal, Bodh Gaya, District-Gaya.

iii. For issuance of an order or direction or an appropriate writ for restraining the respondents from conveying the disputed property admeasuring 2.76 ½ acres, situated at village- Sahdeo Khap, Thana No. 428 Anchal Bodhgaya, in the District of Gaya in favour of respondent no. 6 during the pendency of the present writ application.”

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. At this stage, learned counsel for the petitioner, who is a pre-emptor, seeks permission of this Court to withdraw this writ petition.

6. Permission is accorded.



7. Accordingly, the present application is dismissed as withdrawn.

8. 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.

(Rudra Prakash Mishra, J)

Raj Kishore/-

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