

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15466 of 2018

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1. Dharamnath Giri and Anr S/o Late Haridwar Giri,
 2. Shail Devi, W/o Sri Dharamnath Giri, Both resident of Village- Sharma Amar, P.O. Hansi Kewal, P.S. Bhagwanpur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Hon'ble Members Judicial, The Bihar Land Tribunal Patna.
3. The Commissioner, Tirhut Pramandal, Muzaffarpur.
4. The Additional Collector, Vaishali.
5. The Deputy Collector Land Reforms, District- Vaishali.
6. Ram Kalyan Giri, S/o Late Hardwar Giri, resident of Village Sharma Amar, P.O. Hansi Kewal, P.S. Bhagwanpur, District- Vaishali.
7. Sheela Devi, W/o Late Raj Kumar Ram, resident of Village- Sharma Amar, P.O. Hansi Kewal, P.S.- Bhagwanpur, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Suresh Chand Giri, Advocate Mr.Suman Kumar Singh, Advocate
For the Respondent/s	:	Mr.Md. Khurshid Alam- Aag12 Mr.Majid Mahboob Khan, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 19-11-2024

In the instant petition, petitioners have prayed for
the following relief(s):-

1. That by this writ application the petitioners pray to issue a writ in the nature of certiorari and to quash/set-aside the order dated 01.02.2018 passed in B.L.T. Case No. 462 of 2017 by the Hon'ble Member Judicial Mr. R.P. Sharma whereby and where under the Hon'ble Land Tribunal has been pleased to hold that no material has been brought on



record from which inference can be drawn that opposite party no.6 Sheela Devi (Respondent no.7) purchaser holds land more than 1 acre of land, who purchase only 5.125 decimals of land for the construction of house and dismissed thi case of the petitioners at the time of admission itself and thereby confirmed the order dated 28.04.2017 passed by the leaned Commissioner Tirhut Division, Muzaffarpur in ceiling pre-emption Revision Case No. 28 of 2017 who also treated the respondent no.7 a landless and treating the land homestead in nature has set aside the order of learned Additional Collector, Vaishali dated 11.11.2016 (Annexure-10) passed in Land Ceiling Case No. 22 of 2012-13/365 of 2013-14 whereby appeal filed by the petitioners was allowed after setting aside the order of the learned D.C.L.R., Hajpur passed in Land Ceiling Case No. 10/2010-11 dated 17.04.2012. Therefore the petitioners pray to set aside the order contained in Annexure-7, 13 and 14 of the writ petition and to confirm the order of the contained in Anenxure-10 to this writ petition. And any other relief or reliefs for which the petitioners be found enttleds in law be granted to them.

2. Learned counsel for the petitioners submit that
petitioners have filed an application under Section 16(3) of the



Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 before the DCLR, Hajipur at Vaishali in Land Ceiling Case No. 10/2010-11, which was rejected vide order dated 17.04.2012. Petitioner approached the Additional Collector, Vaishali in Land Ceiling Case No. 22 of 2012-13/365 of 2013-14 and the appeal was allowed in favour of the petitioner. Against the order of appeal, Respondent No. 7 – Sheela Devi approached the learned Commissioner, Tirhut Division, Muzaffarpur in Revision Case No. 28 of 2017 for redressal of the grievance which was decided against the petitioner vide order dated 28.04.2017. Thereafter, petitioner against the order of the learned Commissioner, Tirhut Division, Muzaffarpur approached BLT in B.L.T. Case No. 462 of 2017, which was dismissed vide order dated 01.02.2018 and being aggrieved by the order of BLT, petitioner has approached to this Court. Learned counsel further submits that the land in question pertaining to Khata NO. 321, Khesra No. 401(part), area measuring 5.125 decimals Para is a part of plot no. 401 which a big plot measuring an area of 41 decimal. The said plot was divided into two parts; half of the land fell in the share of late Ramsabad Giri (grandfather of the petitioner no. 1) and half of the land fell in the share of late Sitaram Giri (cousin brother of



Ramsabad Giri), meaning thereby that out of 41 decimals of land, 20 ($\frac{1}{2}$) decimals of land fell in the share of grandfather of the petitioner no. 1. Learned counsel orally submits that he has deposited 10% amount i.e. Rs. 17,500/- out of the consideration money i.e. Rs.1,75,000/-. He further submits that the present matter is related with Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

3. Learned counsel for the State submits that present writ has been filed on 03.08.2018 against the order dated 01.02.2018 passed in BLT Case No. 462 of 2017 and during the pendency of this writ provision of 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was repealed by amendment in 2019 and its place 16(4) was added and in the light of aforesaid provision, Supreme Court in the case of ***Punyadeo Sharma & Ors. Etc. Vs. Kamla Devi & Ors. Etc*** arising out of ***SLP (Civil) Nos. 15694-15701 of 2017*** has held in para 12 and it is stated as under:-

*12. In **Shyam Sunder**, the right of pre-emption was said to be maligned law. Such rights have been characterized as feudal, archaic and outmoded. Such right of pre-*



emption has been taken away and all proceedings pending before any authority have been ordered to be abated including proceedings in any other Court. Any other Court is wide enough to include the Constitutional Courts i.e. the High Court and the Supreme Court. Even the 10% of the pre-emption amount which is required to be deposited was ordered to be deposited. 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.

4. Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was repealed by the amending Act, 2019, incorporating Section 16 (4), which reads as follows:-

"(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."

5. A perusal of the provision, referred to above, clearly reflects that after the repeal of sub-section 3 of Section 16 of the Act, all cases or proceeding pending before all authorities would be deemed to be abated.

6. In view of the discussion made above, the entire pre-emption proceedings stands abated. It shall be open to the petitioners to withdraw 10 % of the amount deposited by them in terms of Section 16 of the Act in accordance with law.

7. Accordingly, the present writ petition stands disposed of.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.11.2024
Transmission Date	N/A

