

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18468 of 2021

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Binita Ojha, Wife of Yogesh Kumar Ojha, resident of Buxar Town, P.O., P.S. and District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principle Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. That Bihar Land Tribunal, Patna.
4. The Commissioner, Patna.
5. The Collector, Kaimur at Bhabhua.
6. The Deputy Collector, Land Reforms, Mohania.
7. Shailendra Kumar Jaiswal @ Vinod Kumar, son of Arjun Sah, resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.
8. Most. Laxmi Jaiswal, wife of Late Abhya Narayan Jaiswal, resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.
9. Priasi, minor daughter of Late Abha Narayan Jaiswal represented through their mother and natural guardian Most. Laxmi Jaiswal. Resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.
10. Rajshree, minor daughter of Late Abha Narayan Jaiswal represented through their mother and natural guardian Most. Laxmi Jaiswal. Resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma
For the Respondent/s : Mr. Raj Kishore Roy (Gp18)

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 11-11-2024 1. Heard learned counsel for the petitioner, learned
AC to GP-18 and the learned counsel appearing on behalf of
the private respondents.
2. The land in dispute pertains to *Khata* No. 318,
Plot No. 2498, area 0.45 acres at *Mouza-Awahariya*.
3. The learned counsel for the petitioner submits



that the land was purchased by the petitioner vide registered sale deed dated 24.11.2015 from Most. Laxmi Jaiswal (respondent no. 8). It is next submitted that the respondent no. 7, who is brother of the husband of Laxmi Jaiswal, filed Pre-emption Case No. 06 of 2015 under Section 16(3) of the Bihar Land Ceiling Act before the DCLR, Mohania (respondent no. 6), claiming his right of pre-emption over the vended land on the ground that he is adjoining *raiyat*, as his father Arjun Sah after partition of the family property in pursuance of Partition Suit No. 495 of 2012 had executed a registered sale deed with regard to some adjacent land in his favour. It is next submitted that the petitioner appeared and filed her written objection that no sale deed was ever executed by Arjun Sah in favour of respondent no. 7, hence, he is not an adjoining *raiyat*, further the land in question is of residential nature, hence ceiling act will not apply. It is submitted that the DCLR vide his order dated (Annexure-1) allowed the pre-emption application. It is submitted that Pre-emption Appeal No. 02 of 2017-18 was filed by the petitioner against the order of the DCLR, but the appeal was dismissed by the Collector by an order dated 13.07.2018 (Annexure-2) against which the petitioner filed Pre-emption



Revision Case No. 136 of 2018 before the Divisional Commissioner.

4. The learned counsel for the petitioner submits that on 08.09.2018 in pursuance of order dated 13.07.2018 passed by the Collector in Mutation Appeal No. 02 of 2017-18, the sale deed was executed in favour of respondent no. 7, through process of Court, but possession of land was not handed over to the respondent no. 7, thereafter the aforesaid revision was filed. It is next submitted that during pendency of Revision Case No. 136 of 2018, the State Legislature enacted Bihar Land Ceiling Amendment, 2019 whereby Section 16(3) of the Bihar Land Ceiling Act was repealed and Section 16(4) (i) and (ii) were inserted vide Gazette Notification dated 25.02.2019 (Annexure-3).

5. The learned counsel submits that Section 16(4) (i) and (ii) were incorporated-

Section 16(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 BLT, the Divisional Commissioner, the Collector, the Additional Collector, the DCLR or in any other Court shall be deemed to be abated,

Section 16(4)(ii)- Pursuant to repeal of



sub-Section (3) of Section 16 of this Act, any purchased money together with a sum equal to 10 percent thereof, already legally deposited shall be refunded, without any interest to the depositor.

6. At this stage, the learned counsel appearing on behalf of the State and the learned counsel appearing on behalf of the private respondents submits that the purchase money along with a sum equal to 10% thereof deposited by the pre-emptor i.e. respondent no. 7 now cannot be returned as sale deed with respect to the land having been executed by process of Court on 08.09.2018.

7. The learned counsel appearing on behalf of the petitioner before adverting to the submissions made by the learned counsels for the respondents submits that the Divisional Commissioner, Patna by his order dated 17.05.2019/07.06.2019 (Annexure-4) dropped the revision case as having abated in pursuance of Bihar Ceiling Amendment Act, 2019 and ordered the pre-emptor to receive the deposited consideration amount along with 10% from DCLR, Mohania.

8. The learned counsel next submits that there was absolutely no infirmity in the order of the Divisional



Commissioner, Patna whereby revision was dropped and the pre-emptor was directed to receive his money deposited in terms of Section 16(3) of the Bihar Land Ceiling Act, 1961 before the DCLR. It is submitted that when Section 16(3) of the Act was in existence, the petitioner had statutory remedy of revision before the Divisional Commissioner and thereafter to BLT for getting the matter adjudicated finally, since Section 16(3) of the Act got repealed with effect from 25.02.2019, the petitioner's remedy of revision was extinguished, but then the same by no stretch of imagination can be construed that the order of the DCLR and the Collector attained finality in absence of adjudication by the competent forum which became *functus officio* by operation of law. It is next submitted that right of pre-emption was a statutory right and the moment the said right was repealed, the right of pre-emption got extinguished. Since right of pre-emption got extinguished, as such, the pre-emptor is not entitled to get the land re-conveyed on the basis of being co-sharer or adjoining *raiyat*. It is next submitted that the respondent no. 7 (Pre-emptor) being aggrieved by the order of the Divisional Commissioner, Patna filed BLT Case No. 547 of 2019 and the same came to be allowed by an order dated 06.08.2021



(Annexure-5) on the ground that only proceeding of revision case before the Commissioner abated and not the entire case, further held that only part of the order of the Divisional Commissioner was bad whereby he directed the pre-emptor to receive the purchased money along with 10% deposited with the DCLR. The learned counsel submits that this perhaps explains as to why the learned State counsel and the learned counsel appearing on behalf of the private respondents made the submission that once the sale deed was executed in favour of pre-emptor, the money cannot be refunded.

9. The learned counsel for the petitioner further submits that petitioner being *bona fide* purchaser after purchasing the land in question came in possession and is still in possession but the learned BLT recorded at Para 41 of its judgment- It is mentioned in Para 13 of the petition that the sale deed has already been acted upon. The mutation was also done in favour of pre-emptor vide Mutation Case No. 629 of R27 of 2018-19. The pre-emptor is in peaceful possession of the land in question. The learned counsel vehemently submits that petitioner, till date, is in possession of the land in question, it is next submitted that since Section 16(3) of the Act was repealed with effect from 25.02.2019 i.e. during



pendency of the revision case before the Divisional Commissioner against the order of the DCLR and the Collector, filed by the petitioner and on account of repeal, all cases or pending proceedings abated, as such, the case in between the petitioner and the pre-emptor, pending adjudication abated, without the case attaining finality, as such, the learned BLT while adjudicating the case completely missed out on the said issue and held at para 39 of the impugned Judgment that- this Court does not find any illegality in first part of the order of the Divisional Commissioner, Patna, but second part of the order passed by the learned Divisional Commissioner, Patna to refund the purchased money of the pre-emptor without any interest is not in accordance with law.

10. It is submitted that the Divisional Commissioner, Patna while passing the order in revision was conscious of the fact that case in between the parties pending adjudication before him had abated in view of repeal of Section 16(3) of the Act, hence, in absence of adjudication, the preemptor was entitled for refund. The learned counsel further submits that the amendment is clear as Section 16(4) (ii) records- pursuant to the repeal of sub-Section (3) of



Section 16 of this Act, any purchased money together with a sum equal to 10 percent thereof, already legally deposited shall be refunded, without any interest to the depositor which amply demonstrates that the Legislature while amending the ceiling act was conscious of the fact that in the event if any case or proceeding remains pending for adjudication before any of the authority competent in that event the proceeding shall abate and the pre-emptor would be entitled for his refund.

11. At this stage, the learned counsel appearing on behalf of the private respondents submits that an affidavit on behalf of the respondent no. 7 dated 02.08.2023 has been filed wherein at Paras 2 and 3 it has been specifically pleaded that the petitioner has withdrawn the amount deposited by the pre-emptor i.e. respondent no. 7 in pursuance of execution of the sale deed through Court in his favour which makes the writ infructuous.

12. The learned counsel appearing on behalf of the petitioner vehemently rebuts the said submission and submits that it absolutely does not stand to reason that as to on what basis, the DCLR permitted the petitioner to withdraw the said amount when the case was pending adjudication before this



Court against the order of the BLT and the Commissioner had specifically directed the pre-emptor to receive the deposited consideration amount along with 10% from DCLR, Mohania. It is next submitted that an illegality has been committed by the DCLR and if any illegality has been committed by an authority, the same cannot be perpetuated by this Court.

13. After hearing the learned counsel for the parties, the Court is in complete agreement with the submissions made by the learned counsel appearing on behalf of the petitioners, as such, the order dated 06.08.2021 passed in BLT Case No. 547 of 2019 by the Hon'ble Chairman is hereby set aside.

14. Accordingly, the instant writ application stands allowed.

(Satyavrat Verma, J)

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