

Arjun Rawat and ors Vs. State and ors

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Court : Patna

Decided On : Aug-30-2013

Appellant : Arjun Rawat and ors

Respondent : State and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.7408 o

1. Arjun Rawat son of Sri Ram Rekh Rawat 2 Ashok Rawat minor son of Arjun Rawat, under the guardianship of his father Arjun Rawat. Both are residents of village-Ghurmuria, P.S.- Sikandara, District- Jamui. Petitioner/s Versus 1. The State of Bihar 2. The Dy. Collector, Land Reforms, Jamui 3. The Addl. Collector, Munger 4. The Member, Board of Revenue, Bihar, Patna 5. Suresh Rawat, son of Jagannath Rawat 6. Ram Sharan Rawat, son of Jagannath Rawat 7. Ravindra Kumar Rawat, son of Jagannath Rawat 8. Banwari Singh, son of Jeetan Singh Are are residents of village-Ghurmuria, P.S.-Sikandara, District-Jamui. Respondent/s

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Appearance : For the Petitioner/s : Mr. Amresh Kumar Singh, Advocate For the Respondent Nos. 1 to 4 : Mr. Kamal Kumar Sinha, A.C. to A.A.G. 2 For the Respondent Nos. 5 to 7 : Mr. Bhubneshwar Prasad, Advocate For the Respondent No. 8 : None
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JUDGMENT

Date:

30. 08-2013 Heard learned counsel appearing on behalf of the petitioners as also learned State counsel appearing on behalf of respondent Nos. 1 to 4 and learned counsel appearing on behalf of respondent Nos. 5 to 7. However, none appears on behalf of respondent No.

8. 2. The present proceeding under Articles 226 and 227 of the Constitution of India arises out of a proceeding under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Patna High Court CWJC No.7408 of 1992 dt.30-08-2013 2/4 Acquisition of Surplus Land) Act, 1961 (in short Land Ceiling Act).

3. The petitioners are the purchasers of 17 decimals of land of plot No. 1005 situate at village-Ghurmuria Pakari in the district of Jamui. Respondent Nos. 5 to 7, claiming to be the boundary raiyats of the vended plot from two sides, filed a pre-emption case giving rise to Case No. 8 of 1988-89 before the respondent Deputy Collector Land Reforms, Jamui. Respondent No. 8 is the vendor of the vended plot.

4. After hearing the parties and on the basis of local inspection, the claim of pre-emption of respondent Nos. 5 to 7 was rejected by the respondent Deputy Collector Land Reforms, Jamui, by order dated 2.6.1989 (Annexure-1) by recording a finding of facts that purchasers are having their residential pucca house over the lands purchased by them. Appeal preferred by the pre-emptors was rejected by the respondent Additional Collector, Munger, by order dated 20.9.1991 (Annexure-2) passed in Ceiling Appeal Case No. 37 of 1989-90 and he affirmed the findings recorded by the respondent Deputy Collector Land Reforms, Jamui. However, by the impugned revisional order dated 17.7.1992 (Annexure-3) passed by the respondent Member, Board of Revenue, Bihar, in Case No. 389 of 1991, the orders passed by the original authority and the appellate authority have been set aside and reversed and claim of the pre-emptors, respondent Nos. 5 to 7, has been allowed on the ground that homestead is not excluded from the pre-

emption proceeding under Section 16(3) of the Land Ceiling Act.

5. Learned counsel appearing on behalf of the petitioners by referring to the averments made in para-5 of the writ petition has submitted that petitioners have constructed their pucca residential house over the lands in question purchased by them from respondent Patna High Court CWJC No.7408 of 1992 dt.30-08-2013 3/4 No.

8. It is also stated that petitioners are coming in possession over the lands in question since the year 1986. It has further been stated in the aforesaid para-5 that petitioners have no other lands for construction of their residential house.

6. Though this petition was admitted as far back as on 3.3.1993 and though respondent Nos. 5 to 7 are represented by their counsel, yet no counter affidavit has been filed on their behalf in the present case disputing the correctness or otherwise of the averments made in para-5 of the writ petition. Therefore, this fact has to be admitted.

7. It is true that in view of the definition of the land under Section 2(f) of the Land Ceiling Act, homestead of landholder is also a land against which pre-emption petition can be filed under Section 16(3) of the Act. However, homestead of a purchaser is not a land within the definition and meaning of Section 2(f) of the Land Ceiling Act in view of a Full Bench judgment of our own High Court in the case of Syed Fakir Mohammad Vrs. Sheikh Salahuddin & Ors. (1975 PLJR 1 .

8. Admittedly, the petitioners have constructed their pucca residential house over the lands purchased by them and they are living there with their family members since 1986-87. The respondent Deputy Collector Land Reforms, Jamui, has also recorded a finding of facts that petitioners are living there by constructing their pucca house as also a well for the purpose of drinking water.

9. In the aforesaid factual background, this Court is of the opinion that the respondent Member, Board of Revenue, Bihar, Patna, has committed an error of law in allowing the claim of pre-emption of respondent Nos. 5 to 7 after setting aside and reversing the concurrent findings of facts recorded by the original

authority as also the Patna High Court CWJC No.7408 of 1992 dt.30-08-2013 4/4 appellate authority in favour of the petitioners.

10. In the result, the impugned revisional order dated 17.7.1992 (Annexure-3) passed in Case No. 389 of 1991 by the respondent Member, Board of Revenue, Bihar, is hereby set aside and the claim of pre-emption raised on behalf of respondent Nos. 5 to 7 with respect to the vended land in question is hereby dismissed.

11. In the result, the writ petition stands allowed. However, there shall be no order as to costs. (Birendra Prasad Verma, J) sudip/-

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