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1-4/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

( CIVIL WRIT JURISDICTION )

C.W.J.C NO. /2013

Siyaram Sah

Versus

.....Petitioner

The State of Bihar & others

.....Respondents

Subject-Pre-emption Matter

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IN THE HIGH COURT OF JUDICATURE AT PATNA  
( CIVIL WRIT JURISDICTION )

C.W.J.C NO.

12013

Siyaram Sah

.....Petitioner

Versus

The State of Bihar & others

.....Respondents

Prayer

For quashing the order dt. 19.12.12 passed by Additional Collector, Madhepu-ra in Area Ceiling Appeal Case no. 02/96 by which set aside the order dt. 18.02.1992 passed by D.C.L.R. in Appeal Case no. 45/92-13 and remand the matter for re-consideration and further, issue direction to the respon-dent to affirm the order dt. 18.06.96 passed by Deputy Collector, Land Re form Madhepura in Area Ceiling Case no. 45/92-93, by which allow the ap-plication of petitioner for pre-emption , on the ground that as per provision under section 16(3) of the Bihar Land Ceiling Act, petitioner is raiyat of ad-joining land and other hand respondent no.5 neither co-share or a raiyat of adjoining land and further give other legal consequential benefit to the peti-tioner.

Petitioner filed an application U/s - 16(3) of the Bihar Land Ceiling Act, against the respondent Ram Narayan Sah and Sri Md. Ashrafuddin regarding land situated in the village Majrahat P.S. Singheshwar and the detail land

24.09.92

Registration was completed on 24.09.92

23.12.92

Petitioner filed case on 23.12.92 within the stipulated period.

Petitioner is raiyat of adjoining land under boundary of the land in the south-ern, northern of the boundary of the land plot no. 3305 and in southern and eastern boundary of Plot no. 3426, hence petitioner is entitled to pre-emp-tion U/s 16(3) of Bihar Land Ceiling Act, whereas respondent no.5 is nei-ther a Co-Shareer of the respondent nor a Raiyat of adjoining land.

18.06.96

Ld. Deputy Collector, Madhepura and he has been pleased to pass order dt. 18.06.96 by holding that petitioner is being the raiyat of adjoining dis-puted land and have fulfilled all due formalities thus he is entitled to pre-emption and directed to respondent no.5 purchaser to convey of the land in favour of the petitioner by excuting and registering a document of transfer within a period from 30 days from the order .

19.12.12

Respodent no.5 aggrieved the order dt. 18.06.96 and filed a Area Ceiling Appeal no. 02/96 before collector against the order dt. 18.06.96 without showing that the respondent is co-sharer or boundary raiyat of the dispute land inspite of that Ld. Additional Collector, has been pleased to pass order dt. 19.12.12 by which set aside the order dt. 18.06.92 and remand the mat-ter before D.C.L.R., Madhepura for re-consideration without assigning any reason for remand the case as any dispute that petitioner is not raiyat of adjoining dispute land, whenever no case of the respondent no. 5, as he is raiyat of adjoining land.

Hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. of 2013

In the matter of an application under Article 226 of the Constitution of India;

A n D

In the matter of

Siyaram Sah, S/o Gowardhan Sah, village- Jajhat Sabaila, P.S. Singheshwar, District Madhepura .....Applicant/Respondent 1st set/Petitioner

Versus

1. The State of Bihar *through the secretary Land Reforms Department, Govt of Bihar, Patna.*
2. The Collector, Madhepura, District -Madhepura.
3. The Addl. Collector, Madhepura, District -Madhepura
4. Land Reforms, Dy. Collector, Madhepura, District Madhepura. ....Respondent
5. Ram Narayan Sah. S/o Late Sakhi Chand Sah, Resident of village- Jajhat Sabaila, P.S. Singheshwar, District Madhepura . ....Respondent/appellant/Respondent
6. Md. Ashrafuddin, S/o Late Narul Azam, R/o Madhepura, Ward No. 4, P.S. & District Madhepura at present village - Majarhat, P.S. Singheshwar, District Madhepura.

.....Respondent/Respondent/Respondent

To,

The Hon'ble Ms. Rekha M. Doshit, the Chief Justice of the High Court of Judicature

at Patna and his companion Justices of the said Hon'ble Court.

The humble application on behalf of  
petitioner above named.

Most Respectfully Sheweth:-

1. That this writ applicaion is being filed for issuance of a writ in the nature of certiorari for quashing the order dt.19.12.12 passed by Additional Collector, Madhepura in Area Ceiling Appeal Case no. 02/96 by which set aside the order dt.18.02.1992 passed by D.C.LR. in Appeal Case no. 45/92-13 and remand the matter for re-consideration and further, issue direction to the respondent to affirm the order dt.18.06.96 passed by Deputy Collector, Land Reform Madhepura in Area Ceiling Case no. 45/92-93, by which allow the application of petitioner for pre-emption , on the ground that as per provision under section 16(3) of the Bihar Land Ceiling Act, petitioner is raiyat of adjoining land and other hand respondent no.5 neither co-share or a raiyat of adjoining land and further give other legal consequential benefit to the petitioner.
2. That main point involved in this writ application are as follows:-
  - i) Whether the order impuged is illegal and fit to be set aside or not ?
  - ii) Wether respondent Addl.Collector committed gross mistake while passing order impuged or not ?
  - ii) Wether action of the respondents is arbitrary, malafide , miscarriage of justice or not ?
3. That petitioner is citizen of India and is entitled for right gurantee under the Constitution of India.
4. That petitioner filed an application U/s - 16(3) of the Bihar Land Ceiling Act, against the respondent Ram Narayan Sah and Sri Md. Ashrafuddin regarding land situated In the

village Majrahat P.S. Singheshwar and the detail land s follows -

Khata	Khesra	Area B.K.D.H.	Boundary
134(old)	2637(old) 3205(New)	0-3-0	N- 3285 (New) S- 3306 E- 3310 W- 3304
279	2692(old) 3426(New)	1-9-6	N- 3361 S- 3425 E- 3427 W-3426

5. That respondent no.6 has transferred the land in question by the register sale deed no. 8690/92 on a consideration of worth of Rs. 31000/, respondent no.5 and Registration was completed on 24.09.92 and petitioner filed case on 23.12.92 within the stipulated period.

6. That petitioner is raiyat of adjoining land under boundary of the land in the southern, northern of the boundary of the land plot no. 3305 and in southern and eastern boundary of Plot no. 3426, hence petitioner is entitled to pre-emption U/s 16(3) of Bihar Land Ceiling Act, whereas respondent no.5 is neither a Co-Sharer of the respondent nor a Raiyat of adjoining land.

7. That the petitioner have already completed due formality and have deposited the consideration money of the dispute land worth of Rs. 31000/ +10% of the total amount consideration money as worth of Rs. 34,100/- and has filed certified copy of Kewala in the question and also applied in the proper form L.C. - 13 and has sent copy of the same by registered post to the respondents.

A true photocopy of the petition dt. 23.12.92 is annexed as Annexure -1 of this petition.

8. That concerning respondent no.5 appeared before the Ld. D.C.L.R. and filed rejoinder

-der petition but he could not file any document by which showing that as he is co- sharer or raiyat of the adjoining land.

9. That after considering the case of the petitioner as well as the case of the respondent no.5 by Ld. Deputy Collector, Madhepura and he has been pleased to pass order dt. 18.06.96 by holding that petitioner is being the raiyat of adjoining disputed land and have fulfilled all due formalities thus he is entitled to pre-emption and directed to respondent no.5 purchaser to convey of the land in favour of the petitioner by executing and registering a document of transfer within a period from 30 days from the order dt. 18.06.96.

A true photocopy of the order dt. 18.06.96 is annexed as Annexure -2 of this petition.

10. That respondent no.5 aggrieved the order dt. 18.06.96 and filed a Area Ceiling Appeal no. 02/96 before collector against the order dt. 18.06.96 without showing that the respondent is co-sharer or boundary raiyat of the dispute land inspite of that Ld. Additional Collector, has been pleased to pass order dt. 19.12.12 by which set aside the order dt. 18.06.92 and remand the matter before D.C.L.R., Madhepura for re-consideration without assigning any reason for remand the case as any dispute that petitioner is not raiyat of adjoining dispute land, whenever no case of the respondent no. 5, as he is raiyat of adjoining land.

A true photocopy of the petition of the Appeal , counter order dt. 19.12.12 are annexed as Annexure -3 ,4 and 5 of this petition.

11. That perusal of the record lordship will find that petitioner is adjoining raiyat of the aforesaid land,hence in view of the section 16(3), petitioner is entitled for the benefit of of the pre-emption.

-11. That Ld. Collector committed gross mistake while passing the order impugned, whenever matter was heard by Land Deputy collector between parties and have considered the rejoinder petition filed by respondent no.5 thus question shall be arisen that whether respondent is adjoining raiyat or not, answer is not either co-share nor adjoining raiyat.

12. That petitioner filed counter affidavit along with five Kawala and map of the disputed land and map of the beside land by which clearly shown as petitioner is raiyat of the adjoining of the disputed land.

13. That above fact and circumstance of this case, it is fit case allowed and set aside the order dt.19.12.12 and confirmed the order dt.18.06.1996.

14. That there is no alternative and efficacious remedy save and except to move before this Hon'ble Court.

15. That petitioner has not moved before this Hon'ble Court any time earlier for the reliefs sought for in this writ application.

It is therefore prayed that your lordships may graciously be pleased to Admit this application, issue notice to show cause as to, why the relief sought for in para-1 of this writ application be not granted to petitioner and after hearing the parties and upon cause being shown, if any, pass such other order / orders as your Lordships may deem fit and proper..

And /or

During the pendency of this writ application may kindly stay the impugned notice dt. 19.12.12.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Siyaram Sah, aged about 62 years S/o Gowardhan Sah, village- Jajhat Sabaila, P.S. Singheshwar, District -Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this application and have fully understood the same. The statements made in paragraphs no. 3,5,6,11,13 and 14 are true to my knowledge and those made in paragraph no. 4,7 to 10 are true to my information derived from the records of the case and rest are by way of submission before this Honours Court.
3. That annexures are true/photo copy of the originals.

~~Signature~~





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4. I/we request that pending decision of this application, I/we may be declared to be entitled to be put in Possession of the land with immediate effect.

Yours faithfully

RYMIR M. HIZ

signature of the applicant.

SIYA RAM. SAH  
(Name in block letters)

Place of filing this application. *Mahipur*

Address :-

Date *23-12-94*

Village/Town *Japhal Salaula*

Police-Station *Singhpur*

P.O. *Singhpur*

Amhal *Singhpur*

Subdivision *Mahipur*

District *Mahipur*

Schedule I  
(Description of the land transferred)

Name of the District *Mahipur*

Description of the

land whether held for agriculture or horticulture or horticulture or homestead.

Sub-Division *Mahipur*

Police-Station *Singhpur*

Village *Mahipur*

Plot No. of the land

Area of each plot

KHAZA KHATA NO.	Classification of each plot (I, II, III, IV, V, VI, VII)		BOUNDARY
	KHESRANO	AREA	
<i>Mahipur 134</i>	<i>3305 (New) 2637 (Old)</i>	<i>0-3-0 Katti</i>	<i>Agriculture N. 3285- S. 3306 E. 3310 W. 3309</i>
<i>279</i>	<i>3426 New 2692 (Old)</i>	<i>1-9-6 Sur 1-12-6 Sur one high land with one sur</i>	<i>11 N. 3361, 3426 S. 3425- E. 3427 W. 3426</i>

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Schedule No. II

Description of the adjoining, land or land held by the co-owners:-

Mouza Majrahat

Dist Fala :-

Village :- Majrahat

P. S. Singhwan

Thana No. 201

Tausine :- 485

J

District :-

In terms of  
+ new plots  
2637 (old)  
3305 (New)

KHATA NO.    KHESRAN.    AREA.    CLASSIFICATION    REMARKS

N. 2620 (old)  
3385 (New)

S. 2638 (old)  
3306 (New)

E. 2607 (old)

W. 2636 (old)  
3304 (New)

N. 3403 }  
3404 } New  
3403 }  
3406 }

2688 }  
2690 } old  
2691 }  
2687 }

S. 3425 (New)  
2707 (old)

E. 2708 (old)  
3427 (New)

W. 3418, 3419, 3420, 3409 (New)  
2703, 2702, 2698, 2695 (old)

2692 (old)  
3426 (New)

J  
AV  
23/1/92

mc  
Ameywar. 1  
Form L.C. 13

Form of Application by A Co- sharer or a Raiyat of adjoining land for transfer of land to him under section 16(3) (i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land).

Act, 1961 (Bihar Act XII of 1962)

(See Rule 19(i))

To,

The Collector (appointed under Bihar Act XII of 1962)  
Deputy Collector Incharge, Land Reforms, Madhepura .

Sir,

I the undermentioned Co- Raiyat of the land adjoining the land of the raiyat named Md. Ashrafuddin, S/o Late Nerul Azam, Ward no. 4, P.S. & District Madhepura, of village at Magrahat (Hal), P.S. Sugheswar, Subdivision Madhepura, District Madhepura beg to state that transfer of one Bigha, twelve Katha, six dhurs of land as described in the Schedule I attached hereto, has been made by the aforesaid raiyat to a person/ other than 2 co-sharer or a raiyat of adjoining land through a document registered on the 24th day of September, 1992 under the Indian Registration Act, 1908.

2. I/We beg to enclose the followings documents :-

(a) A copy of District /Treasury/ Sub- treasury Challan bearing No. 33 dated the 22nd day of December 1992 in token of having deposited a sum of Rs. 34100/- (Rupees Thirty four thousand one hundred only) equal to the amount of the purchase money together with a sum of Rs. 3100/- (Three thousand one hundred) equal ten percent thereof to the credit of the collector under the Act of the Area concerned, namely Deputy Collector, Incharge, Land Revenue, Madhepura.

(ii) A copy of the registered deed by which the land has been transferred by the raiyat transferor.

3. As I/We am/are a co-sharer of the transfer or/a raiyat, holding land as described in schedule II attached hereto, adjoining the land specified in transferred by the aforesaid transferor or raiyat be transferred to me on the terms and conditions continued in the said.

4. I/we request that pending decision of this application, I/We may be declared to be entitled to be put in possession of the land with immediate effect.

Yours Faithfully,

Sd/- invisible

Signature of the applicant.

SIYARAM SAH

(Name in Block letters)

Place of filing this application Madhepura

Date 23.12.92

Address -

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Village/town -  
P.S. - Sugheshwar  
P.O.- Sugheshwar  
Anchal- Sugheshwar  
Sub division - Madhepura  
District -Madhepura

Schedule -I

(Description of the land transferred)

Name of the District Madhepura .....

Description of the land  
whether held or agriculture.

Sub Division - Madhepura  
P.S. - Sugheshwar  
villlage - Magrahat

Classification of each Plot ( e.i. I,II, III, IV/VII)

Mouza	Khata No.	Khesra No.	Area	Classification	Boundary
Magrahat	134	3305(New) 2637(Old)	0-3-0 Radhi	Agriculture	N- 3285 S- 3306 E- 3310 W- 3304
	279	3426 (New) 2692(Old)	1-9-6 dhur 1-12-6 dhur	Agriculture	N- 3361,3426 S- 3425 E- 3427 W- 3426

9

Schedule No. II

Description of the adjoining, land or land held by the Co-sharer)-

Mouza - Magrahat  
Village- Magrahat  
Thana no. 201

Tola  
P.S. Surgheshwar  
Tauzi No. - 485

<u>Khesra No.</u>	<u>Boundary</u>
	N- 2620(old)
3305(New)	3385(new)
2637(Old)	S- 2638(old)
	3306(new)
	E- 2607(old)
	W-2636(old)
3426 (New)	3304(new)
2692(Old)	N- 3405
	3404
	3403
	3406
	2688
	2690
	2691
	2687
	S- 3425(new)
	2707(old)
	E- 2708(old)
	3427(new)
	W 3418, 3419, 3420, 3409(new)
	2703,2702,2698,2693(old)

Ameyan. 2

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Area Ceiling Case No. 45/92-93.

Siya Ram Sah Vrs. Ram Narayan Sah.

आदेश और न्यायिकारी का हस्ताक्षर

आदेश पर की गई कार्यवाही के बारे में विवरण, तारीख के साथ।

ORDER.

This preemption case U/S 16(3) of the land ceiling Act has been filed on behalf of the petitioner Sia Ram Sah against Ram Narayan Sah Opposite 1st Party and Sri Mohd Aaraf Uddin Opposite 2nd party.

2. The land involved in this preemption case is situated in village Majrahat P.S. Singhshwar and other details are as follows:-

Khata.	Kheera.	Area.	Boundary.
134(Old)	2637(Old)	B.K.Dh.	N.:- 3285 (New)
	3205 (New)	0-3-0	S.:- 3306
			E.:- 3310
			W.:- 3304
279	2692(Old)	1-9-6	N.:- 3361
	3426 (New)		S.:- 3425
			E.:- 3427
			W.:- 3426

3. This case was filed on 23.12.92 and on hearing the petitioners lawyer the case was admitted and O.P. was noticed to appear. O.P. appeared 3.3.94 O.P. has also filed a rejoinder petition. The lawyers of both parties were heard.

4. The case of the petitioner is that the O.P. 2nd party has transferred the land in question by registered sale deed No. 8690/92 on a consideration of Rs 31,000=00 and the registration was completion on 24.9.92 and he has filed this case in on 23.12.92. The further case of the petitioner is that he is in the southern and northern boundary of plot No. 3305 and in southern and Eastern boundary of Plot No. 3426 and in SouthxxxxxxBoundaryxxxxxx is therefore entitled to pre-emption U/S 16(3) of the Bihar Land Ceiling Act. The petitioner says that the transferee Opposit first party is neither a Co-sharer of Opposite 2nd party nor a raiyat of the adjoining land. The further case of the petitioner is that he has observed all the formalities required by Law and has deposited the consideration money Plus 10% of the same (Total

Handwritten notes on the right margin.

Free

(11)

अनुसूची १४ - कानून सं० १९५३

आदेश की  
क्रम-संख्या  
और तारीख  
१

आदेश और पदाधिकारी का हस्ताक्षर

आदेश  
में

(Total Rs 34,100=00) and has also filed the certified copy of the kebalas in question and has also applied in proper form L.C.-13 and has sent copy of the same by registered post to the O.P. The petitioner prays that Pre-emption may be allowed.

5. In the rejoinder petition the opposite first party has challenged the prayer of the petitioner and has said that he is neither a co-sharer nor an adjoining Rayat but in support of his contention the O.P. has not produced any kind of evidence. On the other hand the petitioner has filed five different kebalas and on perusal of the same it appears that the contention of the petitioner that he in the different boundaries of the land in question is proved satisfactorily. The petitioner has further filed an affidavit sworn by him to the effect that he does not possess land beyond ceiling limit and even after been successful in this pre-emption he would not exceed the ceiling limit. Nothing has been said by the opposite party against this affidavit of the petitioner.

Thus the petitioner has been able to establish his case of pre-emption from his documents which he has filed.

6. Having taken into consideration the above facts and circumstances of the case I am satisfied that the claim of petitioner for pre-emption has been fully established and has proved his case.

7. Accordingly I hold under section 16(3) of the Land Ceiling Act that land involved in this case, as stated above has been transferred to a person other than a Co-sharer of the rayat or a rayat of the adjoining land, and the petitioner being the rayat of adjoining land, and who has observed all formalities, is entitled to pre-emption and transfer of the land to him. The opposite first party is directed to convey the land in favour of the petitioner by executing and registering



(12)

1956 ११३३

आदेश और पंजीयिकाओं का हस्ताक्षर

अदिन पर की गई जांचों के बारे में लिखनी, तारीख के साथ।

a document of transfer within a period of thirty days from the date of this order, and if he neglects to comply with this direction, the procedure prescribed under order 21 Rule 34 of the C.P.C. shall be adopted.

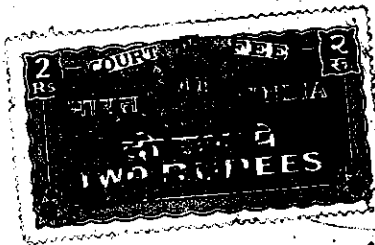
Show this order to the lawyers of both parties.

Dictated & corrected by me.

*D. C. L. K.*  
D.C.L.K. 12/6/96  
Madhepura.

*D. C. L. K.*  
Dy. Collector I/O  
Land Reforms,  
Madhepura.

12/6/96



(13)

Ameypur. 3

*up to the  
carried collected  
on 20.11.96*

In the Court of Collector,  
Madhipura.

Area Ceiling appeal no. 2 /1996.

*M. G. ...  
P. ...  
14/11*

In the matter of-

Against the order dated 18.6.96 passed by D.C.L.R.  
Madhepura in Area ceiling Case No. 45/92-93, u/s  
16(3) of the Bihar land reforms (Fixation of ceiling  
Area and Acquisition of Surplus land) Act, 1961.

AND

In the matter of -

Ram Narain Sah s/o <sup>late</sup> Sakhi chand Sah, resident of village-

Jajhat Sabaila, p.s. Singheshwar, dist. Madhepura... Appellant.

: - Versus - :

1. Siyaram Sah s/o ~~late~~ Gobardhan Sah,  
resident of village- Jajhat- Sabaila, p.s. Singheshwar,  
Distt. Madhepura ... .. RESIDENT 1ST. PARTY.

AND

2. Md. Asraf Uddin s/o late Narul Azam, resident of Madhepura  
ward no. 4, p.s. and dist. Madhepura , at present village-  
Majrahat, p.s. Singheshwar, dist. Madhepura--Respondent 2nd.  
Party.

*Sah*

The above named appellant begs to

state as follows :-

1. That, the respondent 2nd. party Md. Asrat Uddin

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: -2- :

transferred his land measuring one Bigha, twelve Katha and six dhur of village Majrahat p.s. & Anchal Singheshwar, dist. Madhepura to this appellant for a sum of Rs. 34100/- details of which is being given below, by means of a registered deed of sale dated 24th. day of September 1992 under Indian Registration Act.

<u>Khata (old)</u>	<u>Khesra(old)</u>	<u>Khesra(new)</u>	<u>Area</u>	<u>Boundary</u>
134	2637	3305	0-3-0	N- 3285. S- 3306 E- 3310 W- 3304
279	2692	3426	1-9-6	N-3361, 3426 S- 3425 E- 3427 W-3426.

2. That, there after the respondent Ist. Party filed and application u/s 16(3) of the Act on 23.12.92 could not receive any notice but having heard of the case he appeared and filed his rejoinder petition on 26.3.96.

3. That, the respondent Ist. Party left his pairvi in this case as if he left no interest in the case.

Srah

4. That, on 14.3.96 in absence of the respondent Ist. Party the matter was heard on behalf of this appellant and same was

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kept for order.

5. That, there after this appellatnt several times tried to get the information of final order which fact any how this petitioner got that the final order has already been passed in the case as such he applied for certified copy of the order on 11.7.96 which was ready for delevary and handed over this appellatnt on 15.7.96. Then this appeallant could authentically know of the impugned order dated 18.6.96.

The certified copy of the impugned order dated 18.6.96 is being annexed herewith as annexure I

Being aggrieved by and dis-satisfied with the above order dated 18.6.96, this appeallant begs to prefer this appeal, prays that the same may kindly be admitted, record of the court below may kindly be called for and after hearing the ~~lower~~ lawyers and perusing the papers, this court may be graciously pleased to set a side the impugned order dated 18.6.96 on and amongst others the following grounds; this appellatnt further prays that in the mean time the ~~appex~~ operation of the impugned order may kindly

Srah

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be stayed till final hearing of this appeal;

:- GROUNDS :-

1. For that, the impugned order dated 18.6.96, are quite bad in law as well as against the fact and circumstances of the case.
2. For that, impugned order dated 18.6.96 has been passed about three months after from the date of heaving on 14.3.96. The learned lower court ought to have passed the impugned order within the fifteen days of the hearing but he has clearly violated the provision of general law and natural justice.
3. For that, the learned lower court ought to consider the fact that the respondent the Ist. Party has not filed the impugned <sup>SA</sup> ~~the case of order~~ <sup>... V/S H(3)</sup> for pre-emption in a proper way and as such same was fit to be rejected even on the first hearing.
4. For that, the respondent 2nd. party Md. Ashrufuddin the vendor of this appellant was <sup>SA</sup> an essential and necessary party and not step for his appearance was made by the learned lower court and as ~~the~~ such order has been passed behind his back and same gives a death blow to the case

Sah

(B) (A)

of the respondent Ist. Party.

5. For that, for having a right to file a case u/s 16(3) of the Act the pre-emption<sup>or</sup> must be an<sup>or</sup> adjoining raiyat of the land in question or he should be a co-sharer of the alleged vendor but in this particular case the respondent Ist. Party is neither a co-sharer nor the adjoining raiyat. The respondent Ist. Party ought to proof this fact through any supporting documents or evidence which he has completely been failed and the learned court passed the order for preemption in his favour without any basis and as such his claim for ~~pre~~ pre-emption should be rejected on this ~~score~~ score alone.

6. For that, the alleged claim for pre-emption by the respondent Ist. Party is clearly time barred u/s 16(3) of the Act. Any co-sharer of the transferer or any raiyat holding land adjoining the land transferred shall be ~~entitled~~ entitled within three months of the date of Registration of the document of the transfer to make an application before the collector ( under the Act) in the prescribed manner. In this case even according to the respondent Ist. party the Registration of the sale deed was completed on 24.9.92 and

Srah

(18)

: -6- :

the case of pre-emption was filed and cognizance was taken by the learned lower court on 29.12.92 which will appear from the order sheet of learned court below. Of course the date 23.12.92 has been ~~reported~~ <sup>reported</sup> along with 29.12.92 but ~~it~~ it is quite clear that this application for pre-emption was brought to the knowledge and notice of the learned court below ~~at~~ only on 29.12.92 and not before that. When the learned ~~and~~ lower court took the cognizance of the matter and it will be presumed that the same was filed only on that date viz on 29.12.92 and not before.

7. For that, mere presentation<sup>24</sup> of the application in the sense that the application having handed over to ~~some~~ <sup>one</sup> subordinate in the office of the learned D.C.L.R. Madhepura that can not mean its having been entertained by that court viz the presiding officer of that court on that date. The learned D.C.L.R. in this particular case took cognizance on 29.12.92, when only when it was placed before him and not prior to that. No application u/s 16(3) of the Act can be entertained beyond the period of three months and as such the application for pre-emption filed by the respondent Ist. Party is clearly a time barred which gives a death blow to the case of the respondent Ist. Party and this fact has clear

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(17)

been ignored by the learned lower court.

8. For that, the L.C. form 13 is not properly filled up, the treasury challan which had been submitted had not been made in proper head. And other formalities have also not been ~~made~~ complied with by the respondent Ist. Party as such same is not maintainable in the eye of law.

9. For that, the lands in question is "Homestead land" and same is not cultivable nor fit for cultivation as such no ~~no~~ case of pre-emption is applicable. The learned lower court has also clearly ignored this aspect of the matter.

10. For that, the matter of sale was already negotiated between this appellant and respondent 2nd. party several years back and pricess were paid and possession was delivered to this appellant. The sale deed in question was executed on the date much after only to give a legal clerk and to avoid future complication.

11. For that, the learned lower court did not utter even award regarding the above points raised by this appellant and it clearly shows the vindictiveness and ~~and~~ arbitrariness of the learned lower court.

*Srah*



12. For that, it is surprising enough from the perusal of the impugned order that the learned lower court has maintained certain papers on behalf of the respondent Party which is beyond the knowledge of this appellant and the same was not filed at the time of hearing and before.

13. For that, this appellant is a person having his land adjoining of the lands in question. ✓

14. For that, the right of pre-emption is a very weak right and the respondent Ist. Party in all respect has to make out his case u/s 16(3) of the Act which has been not done in a way, which was incumbent upon him to establish.

15. For that, the learned lower court how without hearing the respondent Ist. Party has passed the impugned order in his favour without any basis and quite ignoring the existing facts and circumstances and position of law and has passed quite perverse, erroneous and illegal order in favour of the respondent Ist. Party without any basis.

16. For that, there are other grounds or grounds which will be placed at the time of hearing.

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(21)

(A)

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17. For the the impugned orders are liable to be set a side and this appeal isxa to fit to be allowed.

The appellant

through

*S. G. S. Adv.*  
Advocate. 17.7.96.

Certified that I have gone through the papers of the appellant and have prepared its grounds, they are good one and I undertake to support it at the time of hearing.

*S. G. S.*  
Advocate. 17/7/96.

न्यायालय में:-

श्रीमान् उपर समाहर्ता, मधेपुरा

अरिया तिलिग अपील सं०-२/१६-१७

रामनारायण साह ----- अपीलार्थी

बनाम

तियाराम साह एवं अन्य ----- प्रतिपक्षी

लिखित बहस तरफसे प्रतिपक्षी तियाराम साह दाखिल कर

नय निवेदन इस प्रकार करते हैं:-

- =====
- 1- यह कि प्रतिपक्षी तियाराम साह ने एक अरिया तिलिग वाद विधान भूमि सुधार उप समाहर्ता मधेपुरा के न्यायालय में दाखिल किया।
  - 2- यह कि उक्त वाद में सारी बीपधारिकता पूरी करने के बाद रामनारायण साह को न्यायालय में उपस्थित होकर अपना पक्ष रखने को कहा गया।
  - 3- यह कि रामनारायण साह न्यायालय में उपस्थित हुए तथा प्रतिउत्तर भी दाखिल किया परन्तु किसी प्रकार का साक्ष्य न्यायालय में प्रस्तुत नहीं किया जब कि अपने वाद के समर्थन में पांच केवाला तियाराम साह की ओर से दाखिल किया जिससे यह स्पष्ट होता है कि विवादित भूमि के धोहदी में तियाराम साह की जमीन है।
  - 4- यह कि विधान भूमि सुधार उप समाहर्ता मधेपुरा ने 18-6-96 को आदेश

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सियाराम साह के पक्ष में पारित किया ।

5- यह कि विद्वान भूमि सुधार उप समाहर्ताका आदेशबिलकुल तही न्याय संगत है।

6- यह कि विद्वान भूमि सुधार उप समाहर्तानि अपने आदेशमें यह भीदि स्पष्ट किया कि सियाराम साह तिसिंग लिमिटे से अधिक जमीन नहीं है।

7- यह कि प्रतिपक्षी सियाराम साह की ओर से अपने समर्थन में पाँच केवाला श्रीमान् के अलोकन हेतु दाखिल किया जाता है।

8- यह कि प्रतिपक्षी सियाराम साह श्रीमान् नुंको तुलह करने हेतु विवादिता भूमि एवं उसके वसूल की भूमि का नक्शा भी दाखिल करते हेजितसे स्पष्ट होता है कि विवादिता भूमि के अह. वगल. में सियाराम साह की भूमि है।

9- यह कि जो केवाला श्रीमान्के अलोकन हेतु दिया जा रहा है वह सियाराम साह सियाराम साह के पिता गोवर्धन साह तथा सियाराम साह के शाले उपेन्द्र साह के नाम से हेतथा जमीन पर दखल कब्जा सियाराम साह का ही बना आ रहा है।

विवादिता भूमि का विवरण

खता-	खेतरा	रकबा-	पौहदी
134 पु०	2637 पु० ----- 3205 न०	बी० क० धुर 0 3 0	उत्तर- 3285 दखिन- 3306 पूरव- 3310 पश्चिम-3304
279	2692 पु० ----- 3426 न०	1- 9- 6 ----- 1 12 6	उत्तर- 3361 दखिन-3425 पूरव- 3427 पश्चिम-3426

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- 1- केवाला नाम से मिहरी साह व तियाराम साह केवाला सं०-14484
- 2- केवाला नाम से मिहरी साह व तियाराम साह केवाला सं०-7933
- 3- केवाला नाम से गोवर्धन साह केवाला सं०- 10434
- 4- केवाला नाम से उपेन्द्र साह केवाला सं०-9995
- 5- केवाला नाम से गोवर्धन साह केवाला सं०- 13383

विदायित ५

Annexure 5

(25)

न्यायालय अपर समाहर्ता, मधेपुरा

एरिया सिलींग अपील वाद संख्या- 02/96

प्रथम पक्ष

राम नारायण साह

बनाम

द्वितीय पक्ष

सियाराम साह एवं अन्य

:- आदेश :-

यह अग्रकथ वाद राम नारायण साह पिता-स्व० सखीचन्द साह, ग्राम-जजहट सबैला, थाना सिंहेश्वर, जिला - मधेपुरा ने भूमि सुधार उप समाहर्ता, मधेपुरा के न्यायालय के अग्रकथ वाद संख्या- 45/92-93 में पारित आदेश दिनांक 18.06.1996 के विरुद्ध माननीय समाहर्ता न्यायालय में दायर किया है जिसका अग्रकथ अपील वाद संख्या- 02/96 राम नारायण साह बनाम सियाराम साह एवं अन्य है। माननीय समाहर्ता, मधेपुरा के न्यायालय में इस वाद को अंगीकृत करते हुए प्रतिवादी को नोटिश् निर्गत किया गया एवं निम्न न्यायालय से अभिलेख की मांग की गई। निम्न न्यायालय से अभिलेख प्राप्त हुआ एवं प्रतिवादी वकालतनामा के साथ उपस्थित हुए। इस बीच इस वाद को सुनवाई कर निष्पादनार्थ अधोहस्ताक्षरी के न्यायालय को प्राप्त हुआ।

अधोहस्ताक्षरी द्वारा इस वाद को पंजीकृत करते हुए सुनवाई की तिथि निर्धारित की गई। इस वाद में विवादित भूमि का विवरण निम्न प्रकार है :-

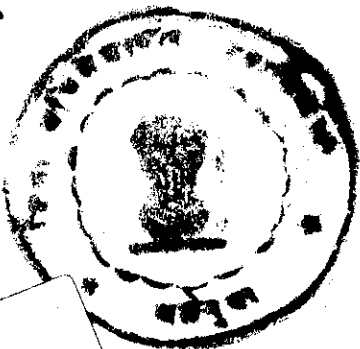
मौजा	खाता नं०	खेसरा नं०	रकबा	चौहददी
मजरहट	134 पु०	2637 पु०	3305 नया 0-3-0 कट्ठ	30- 3285 द० -3306 पू०- 3310 प०-3304
	279 पु०	2692 पु०	3426 नया 1-9-6	30-3361,3426 द०-3425 पू०-3427 प०-3426

कुल- 01बिघा, 12 कट्ठ, 06 धूर

उभय पक्षों के विद्वान अधिवक्ताओं को सूना।

इस वाद में प्रथम पक्ष के विद्वान अधिवक्ता का कहना है कि विवादित जमीन के चौहददीदार रैयत हैं। इसलिए उन्हें बिहार भू हदबन्दी अधिनियम 1961 की धारा 16(3) के अन्तर्गत pre-emption का अधिकार बनता है।

प्रथम पक्ष विद्वान अधिवक्ता का आगे कहना है कि भूमि सुधार उप समाहर्ता, मधेपुरा के न्यायालय के अग्रकथ वाद सं० 45/92-03 में दिनांक 18.06.96 को पारित आदेश नियम विरुद्ध है।



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प्रथम पक्ष के विद्वान अधिवक्ता का आगे कहना है कि बिहार भू हदबन्दी अधिनियम 1961 की धारा 16 (3) के अन्तर्गत तीन माह के अन्दर ही अपील किया जाना चाहिए था जबकि विवादित मामले में दिनांक 29.12.92 को वाद दायर किया गया है जो स्वतः कालबाधित (Time Bard) है।

प्रथम पक्ष के विद्वान अधिवक्ता द्वारा उप समाहर्ता भूमि सुधार, मधेपुरा वाद संख्या- 45/92-93 में दिनांक 18.06.92 को पारित आदेश को रद्द करने हेतु अनुरोध किया गया है।

द्वितीय पक्ष के विद्वान अधिवक्ता का कहना है कि वे विवादित भूमि के दो तरफ चौहद्दी में हैं एवं उनका दावा सही है।

द्वितीय पक्ष के विद्वान का आगे कहना है कि बिहार भू हदबन्दी अधिनियम 1961 की धारा 16(3) के अन्तर्गत दो तरफ चौहद्दीदार रैयत होने के नाते उप समाहर्ता, भूमि सुधार, मधेपुरा के द्वारा पारित आदेश दिनांक 18.06.96 नियमसंगत एवं सही है।

द्वितीय पक्ष के विद्वान अधिवक्ता ने इस अपील आवेदन को ख़ारीज करने का अनुरोध किया है।

निम्न न्यायालय के अभिलेख एवं उसके साथ संलग्न अन्य कागजातों का भी अवलोकन किया। सुनवाई के क्रम में उभय पक्षों के विद्वान अधिवक्ताओं को सूनने, निम्न न्यायालय के अभिलेख एवं अन्य कागजातों के अवलोकन तथा सुनवाई के क्रम में उभय पक्षों द्वारा समर्पित कागजातों / साक्ष्यों के अवलोकन करने के पश्चात् सम्यक् विचारोपरान्त मैं इस निष्कर्ष पर पहुँचता हूँ कि :-

1. निम्न न्यायालय के आदेश फलक दिनांक 26.03.06 के अवलोकन से यह स्पष्ट होता है कि बिना उभय पक्षों को सुने इस वाद में आदेश पारित कर दिया गया है जो पुनर्विचारण योग्य है।
2. इस वाद में साक्ष्य के रूप में दाखिल निर्बंधित केवाला में चौहद्दी के स्थान पर मात्र खेसरा संख्या अंकित है इसके साक्ष्य में प्रतिवादी के द्वारा कोई कागजात दाखिल नहीं किया गया जिससे स्पष्ट हो सके कि चौहद्दी में अंकित खेसरा के वास्तविक चौहद्दीदार रैयत कौन हैं।

अतः उभय पक्षों के विद्वान अधिवक्ताओं को सूनने, सुनवाई के क्रम में उपलब्ध कराये गये साक्ष्यों के आधार पर निम्न न्यायालय के अग्रकय अपील वाद संख्या- 45/92-93 में भूमि सुधार उप समाहर्ता, मधेपुरा द्वारा दिनांक 18.06.92 को पारित आदेश को विरुद्ध करते हुए उक्त वाद को पुनः भूमि सुधार उप समाहर्ता, मधेपुरा के न्यायालय में पुनर्विचारण हेतु प्रतिप्रेषित (Remand) किया जाता है एवं भूमि सुधार उप समाहर्ता, मधेपुरा को निदेश दिया जाता है कि उक्त वाद में उभय पक्षों को विधिवत नोटिश तामिला कराकर एवं उभय पक्षों को सुनकर तथा उभय पक्षों द्वारा दाखिल साक्ष्य एवं स्थलीय जाँचोपरान्त संगत प्राधानों के आलोक में नियमानुसार आदेश पारित करें।

आदेश की प्रति के साथ निम्न न्यायालय के मूल अभिलेख भूमि सुधार उप समाहर्ता, मधेपुरा को अनुपालन हेतु भेजे।

आदेश से उभय पक्षों को अवगत करा दें।

लेखापित एवं शुद्धिकृत

अपर अधिवक्ता,  
मधेपुरा

अपर अधिवक्ता,  
मधेपुरा।



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Authorization No. 2037

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REGISTRATION, CROSS & PROMOTION DEPT.  
MADHEPURA SCORE, MADHEPURA

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MADHEPURA  
REGISTRATION DEPARTMENT