

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C). No.4160 of 2005

Jamuni Devi wife of Girdhari Mahto, resident of village – Surajpura, P.O. & P.S. Barhi, District - Hazaribagh.

... ... **Petitioner**

Versus

1. The State of Jharkhand.
2. The D.C.L.R. Hazaribagh.
3. The Additional Collector, Hazaribagh.
4. The Member, Board of Revenue, Jharkhand, Ranchi.
5. Jathu Ram son of late Nandlal Ram, resident of village – Surajpura, P.O. & P.S. Barhi, District - Hazaribagh

... ... **Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. R.K. Gupta, Advocate

For the Private Resp. : Mr. Jyoti Prasad Sinha, Advocate

For the Resp. – State : Mr. Ashish Kr. Thakur, A.C. to S.C. (L&C)

06/28.09.2018 Heard Mr. R.K. Gupta, counsel appearing on behalf of the petitioner.

2. Heard Mr. Jyoti Prasad Sinha, counsel appearing on behalf of the private respondent.

3. Heard Mr. Ashish Kumar Thakur, counsel appearing on behalf of the respondent-State.

4. This writ petition has been filed for the following relief:

“For quashing the order dated 29.12.95 passed by LRDC Barhi L.C. Case No.86/90. Further quashing of the Revenue order dt. 9.4.2005 passed by the Member, Board of Revenue, Jharkhand whereby and whereunder the Revision by the Opposite party was allowed and the appellate court dated 13.1.2003 was set aside.”

5. Counsel for the petitioner submits that the writ petition can be disposed of on a short point. He submits that the private respondent herein is the pre-emptor in connection with the property involved in this case and the admitted dates are that on 19.03.1990, the deed was presented for registration and it was

registered on 18.8.1994 and before the date of registration an application for pre-emption was filed on 29.5.1990 i.e., two months after the date of presentation of deed for registration. He submits that the condition precedent for filing application for pre-emption under Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and acquisition of Surplus Land) Act, 1961 is that there has to be a transfer of land and the application for pre-emption has to be filed within three months from the date of registration of the deed. He submits that as the application for pre-emption was itself pre-mature, having been filed prior to the registration, and hence was not maintainable. He submits that no order could have been passed in favour of the private respondents. He submits that this aspect of the matter has not been properly considered in the impugned order and the Member, Board of Revenue while passing the impugned order has recorded as follows:

"The preemption petition was indeed filed after execution of but before registration of the sale deed. The Collector under the Act, however, took cognizance only after it had been registered and the transfer completed. He therefore, did not commit any irregularity in this regard."

6. The counsel submits that the law of preemption has to be followed as per the mandate of Section 16 of the aforesaid Act and as the application for pre-emption itself was not maintainable on the date, it was filed, therefore no order could have been passed on such application and accordingly private respondent ought to have filed a fresh petition after registration of the sale deed. He submits that this aspect of the matter has not been properly considered in the impugned order and the impugned order is not legally sustainable on this point of law.

7. Counsel appearing on behalf of the private respondent do not dispute the aforesaid dates but however he submits that on

this pure technical ground, the application for pre-emption filed by the private respondent could not have been rejected.

8. Counsel appearing on behalf of the respondent-State submits that the parties as well as the authorities are duty bound to act as per the provisions of law and apparently the condition precedent for filing an application under Section 16 (3) of the aforesaid Act was not satisfied on the date when the application was filed.

9. After hearing the counsel for the parties and after considering the materials on record, this Court finds that admittedly the application for pre-emption was filed prior to the registration of the sale deed and as per the provisions of Section 16 of the aforesaid Act, an application is maintainable only upon registration and transfer. There is no dispute that the property stands transferred only upon registration and not merely by presentation for registration. This Court is also of the considered view that the action has to be taken as per the provisions of Act and the cause of action for filing the application for pre-emption was not available on the date when the application was filed and accordingly the said application could not have been entertained by the authorities. This is not merely an irregularity but is a violation of mandatory provision of law and accordingly this aspect of the matter could not have been ignored by the revisional authority while passing the impugned order. This Court is of the considered view that the application for pre-emption in relation to the land in question could not have been filed prior to registration of the sale deed as there was no transfer of land without the registration of sale deed. Accordingly the condition precedent for filing the application for pre-emption was not satisfied.

10. On the aforesaid short point, the impugned orders dated 29.12.95 passed by Land Reforms, Deputy Collector, Barhi in L.C. Case No.86/90 and revisional order dated 9.4.2005 passed by the

Member, Board of Revenue, Jharkhand in Hazaribagh Revision
Case No. 10 of 2003 are hereby set-aside.

(Anubha Rawat Choudhary, J.)

Saurav/