

**(1985) 02 PAT CK 0004**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 624 of 1978

Punit Rai and Another

APPELLANT

Vs

Additional Member, Board of Revenue, and Others

RESPONDENT

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**Date of Decision :** 19-02-1985

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

**Citation :** (1985) PLJR 910

**Hon'ble Judges :** Satya Brata Sanyal, J

**Bench :** Single Bench

**Advocate :** H.N. Sahay, for the Appellant; K.K. Ghose, for the Respondent

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## **Judgement**

Satya Brata Sanyal, J.—This writ application is at the instance of the purchasers. It arises out of a proceeding u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, hereinafter to be referred to as "the Act". For determination of the question involved in this writ petition, facts in detail are not necessary. Suffices it to say, on 7.12.1972 (Annexure 4) petitioner No. 1 purchased plot Nos. 1484, 1416, 7094, 19 and 26, a total area of 82 decimals situated in village Haldi Chapra, P.S. Maner, district Patna. Admittedly these are plot scattered at different places and do not constitute one block. Petitioner No. 1 claimed to be adjacent raiyat of plot Nos. 1416 and 7094 being owner of plot No. 1415 and plot No. 7. Petitioner No. 1 claims that he is joint with his brother Police Rai and others. They are all sons of Dhorha Rai, who is the grandson of Jodhan Rai. It is, therefore, said that even though the name of Police Rai appears in the records with respect to adjacent plot Nos. 1415 and 7, he is joint with his brother and he is to be treated as an adjacent raiyat. Petitioner No. 1 claims that he being an adjacent raiyat of two plots purchased under a composite sale deed his purchase cannot be nullified by the pre-emptor, who is admittedly a cosharers of all the plots conveyed by Annexure 4.

2. The respondents' case, on the other hand, is that petitioner No. 1 is not an adjacent raiyat even of plot Nos. 1416 and 7094 which, is manifest from Annexure 4 itself. The documents relied upon to show jointness are not decisive. Section 16(3) of the Act does not apply to khata but to the plot. Many persons can have land in the same khata and thereby all of them cannot claim to be cosharers having contiguous land. It was alternatively submitted that assuming that petitioner No. 1 is adjacent to two plots he cannot resist the right of pre-emption by a person who is a cosharer of, all the plots and there being no provision for apportionment, the purchaser even though adjacent to two plots cannot resist the claim of the pre-emptor with respect to the entire sale deed.

3. The learned Member, Board of Revenue, rendered the finding that petitioner No. 1 was not joint with Police Rai. Therefore, he cannot resist the application for pre-emption, upholding the decision of the Additional Collector. The courts below did not apply their mind to the question I will just advert. Even learned counsel for the petitioners tried to establish before me that petitioner No. 1 is joint with Police Rai. Therefore, the application for preemption is not maintainable whereas counsel for the respondents tried to dislodge the said proposition.

4. One of the objects of the Act is to secure consolidation by giving the right of reconveyance to a cosharer or a raiyat of the adjoining area so that the land can be used in the most advantageous manner and also to prevent fragmentation of the land [See *Hira Lal Agarwal v. Ram Padarath Singh* (1968 P.L.J.R. 68A S.C.)]. The pre-emptor is bound to show not only that his right is as good as that of the purchaser but that it is superior to that of his [See *Bishan Singh and Others Vs. Khazan Singh and Another*, . In the case of *Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others*, a Full Bench of this Court held that the right that can be claimed by a pre-emptor is after fulfilment of certain conditions, namely, (a) there has been a transfer of land by execution and registration of a document; (b) the transferee is neither a cosharer in respect of the transferred land nor a raiyat of any adjoining land; (c) the person claiming to be entitled to be put in possession of the transferred land must himself be a cosharer of the transferor or a raiyat holding land adjoining the land transferred and (d) the pre-emptor must present an application in the prescribed form along with a challan showing a deposit of the sum equivalent to the purchase money together with a further sum equal to ten per cent thereof and the same must be done within three months from the date of registration of the document of transfer. The claim of pre-emption, it was further held, must be with respect to the entire land transferred or none at all.

5. In the instant writ petition the question revolves round the word "land" as referred to in section 16(3) of the Act. It is true that the right of pre-emption is a weak right and may in some regard put a restriction to acquire land unless one is adjacent to the land concerned. It is, therefore, a protected legislation under the Constitution of India with the avowed object already referred to above. The word "land" came to be considered in the case of *Mt. Dukho Devi and Others Vs. Uchit*

Lall Mandal and Others, and the said case throws some light on the issue before me, that is, whether a purr chaser can resist the claim of a pre-emptor with respect to, all the plots conveyed being a cosharer, the purchaser himself being an ad-joining raiyat of only one plots put of two plots transferred. In that case the new survey plot numbers with respect to which pre-emption was claimed were 877 and 259. The corresponding old settlement plot for the aforesaid two plots was 204. It was contended by the purchaser that the pre-emptor was adjacent to only one of the plots and, therefore, the pre-emptor's claim can be upheld with respect to that plot which was adjacent to his plot. The Court observed that the purchased land was always treated as one piece of land. The litigation proceeded in all the courts on the assumption that the purchased land was one piece of land though it may be consisted of two survey plots. It will, therefore, be manifest from the said decision that the land referred to u/s 16(3), even though may be in several plots, for the purpose of adjacency must comprise a block of land. This also sub-serves the object of the Act, namely, to secure consolidation.

6. The matter in a somewhat different-form again came for consideration in the case of Smt. Sudama Devi and others v. Parmeshwar Narain Singh and another (1973 P.L.J.R. 534) which was a case of several plots being involved. Mr. Shreenath Singh appearing for the purchasers, inter alia, raised two questions, namely, (a) the pre-emptors not being adjacent raiyats or cosharers of all the plots of land transferred, the pre-emption could not be allowed; and (b) the purchasers being adjacent raiyats of all the plots transferred, no order of pre-emption could be made against them. This Court in the said case considered the two questions together after referring to a few decisions of this Court and observed that if the land transferred is comprised in several plots, which are not in one block, then the pre-emptor has to establish that either he is a cosharer of the plots transferred or an adjacent raiyat of them. He has to establish this fact in respect of all the plots if the various plots are different pieces and different blocks of land. The Court there after observed that the same principle would also apply in the case of a purchaser.

The purchaser, therefore, has to be as well adjoining raiyat of the land transferred. I think this case is decisive of the issue before me.

7. I am, therefore, of the opinion that an application for pre-emption can only be resisted, u/s 16(3) of the Act by a purchaser when he is able to demonstrate that either he is a cosharer of the land transferred or is an adjoining raiyat thereof. If several plots constitute one" block or several blocks of land and if the purchaser is an adjoining raiyat of the said block or blocks of land, irrespective of survey plot numbers, he can successfully resist an application for pre-emption even if the pre-emptor is a cosharer of all the plots or is an adjacent raiyat of the several plots or the land forming one block/blocks is the subject matter of transfer. Consolidation of Holding and Prevention of Fragmentation being the very fabric of this legislation, the view taken by me subserves the said purpose as well.

8. In the instant case admittedly the lands are not in one block. On my repeated query learned lawyer contended that petitioner No. 1 is adjacent to two plots only. The lands are in several plots. The purchaser, therefore, is an adjacent raiyat of two plots only even assuming in his favour, that he is a member of the joint family of Police Rai. The pre-emptor, therefore, has been able to show not only that his right is as good as that of the purchaser but that it is superior to that of the purchaser being a cosharer of all the plots constituting the land transferred. In the result, this application fails and is accordingly dismissed. The pre-emptor should be restored to possession of the land transferred. There will be no order as to costs.