

(1970) 09 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 590 of 1967

Ram Chandra Srivastava and Others

APPELLANT

Vs

Parsidh Narain Singh and Others

RESPONDENT

Date of Decision : 23-09-1970

Acts Referred:

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

Citation : AIR 1971 Patna 302

Hon'ble Judges : G.N. Prasad, J;Anwar Ahmad, J;A.B.N. Sinha, J

Bench : Full Bench

Advocate : Jagdish Pandey, for the Appellant; J.C. Sinha, Uday Sinha and Shreenath Singh, Standing Counsel No. 1, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—This application under Articles 226 and 227 of the Constitution is directed against the order of the Collector of Patna (Respondent No. 7), in the first instance; that of the Commissioner, Patna Division, Patna (Respondant No. 6) on appeal, and finally that of the Member Board of Revenue (Respondent No. 5) in revision, concurrently rejecting a petition filed by the petitioners u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, Bihar Act 12 of 1962 (hereinafter referred to as "the Act"). The relevant facts are not in dispute and may be briefly stated as follows:

2. On the 23rd October, 1962, two sale deeds were executed and registered in favour of Prasidh Narain Singh (Respondent No. 1); one for Rs. 400/- by Swaroop Singh (Respondent No. 2, since deceased, and represented by his legal representatives) in respect of .03 acre of land comprised in plot No. 738 in village Sadabh, Pargana Masaurha police station Bikram, district Patna, and the other for Rs. 650/- by Shrimati Lalmati Devi (Respondent No. 3) in respect of .03 acre of land in plot No. 738 as well as .10 acre of land in plot No. 2661 situated in the same village. On the 5th December, 1962, the petitioners made an

application to the Collector u/s 16(3) of the Act for being put in possession of the lands covered by both the sale deeds and for a direction to Respondent No. 1 to execute a document of transfer in their favour-Along with the petition the petitioners filed a challan showing a deposit of Rs. 1050/- plus Rs. 105/- as required by the proviso to Clause (i) of Sub-section (3) of Section 16. In the original petition particulars as required in Schedule I of Form LC13, mentioned in Rule 19(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963, hereinafter referred to as "the Rules", framed u/s 45 of the Act, had not been furnished. But subsequently they were furnished by the petitioners on the 29th December, 1962. Since, however, the Rules had not been published until then, the Collector rejected the petition as not maintainable by his order dated the 30th August, 1963. A copy of the Collector's order is Annexure "1" to the writ application.

3. On appeal, however, the Commissioner set aside the Collector's order dated the 30th August, 1963, by his order dated the 23rd October, 1963, since by then the Rules had been published. He remanded the proceeding to the Collector for disposal according to law after giving the petitioners a reasonable opportunity to comply with the prescribed Rules in regard to the form of application and the manner of deposit. A copy of the Commissioner's order is Annexure "2" to the writ application.

4. On remand, the Collector again rejected the petition by his order dated the 21st June, 1966, holding that respondent No. 1 had interest in plot Nos. 2659 and 2660, both adjoining plot No. 2661, which is one of the plots in dispute, and as such the petitioners were not entitled to the right of pre-emption which they were claiming since "Law does not give superior right to co-sharers to that of the tenants of the adjoining lands. In fact, the right of pre-emption itself is a weak right and the settled law is that an attempt to defeat this right of pre-emption by legitimate means is justified". It appears, however, that the Collector did not record any clear findings as to whether the petitioners were or were not co-sharers of either of the two plots in dispute. A copy of the Collector's order is Annexure "3" to the writ application.

5. The petitioners, thereupon, preferred an appeal before the Commissioner u/s 30 of the Act. The Commissioner found that the petitioners were co-sharer raiyats in respect of plot No. 738, but he declined to interfere because it was admitted before him that Respondent No. 1 was a raiyat in respect of lands adjoining plot No. 2661 and hence Clause (i) of Section 16(3) of the Act was not attracted. A copy of the Commissioner's order, which is dated 29th December, 1966, is Annexure "4" to the writ application.

6. The petitioners then went up to the Board of Revenue u/s 32 of the Act, and relying upon the finding of the Commissioner that the petitioners were co-sharers in respect of plot No. 738, it was urged before the Additional Member, Board of Revenue, that the petitioners' prayer was to be allowed with respect to that plot, though not in respect of plot No. 2661. The Board of Revenue

negatived this contention observing as follows:

"It is clear that in this case, in which 2 plots of land were sold, the applicants u/s 16(3) could press their interest, in terms of co-sharership, in regard to only one plot viz., plot 738, and admittedly, they do not have land on the boundary of the other plot viz., plot 2661. The Board has held that in such a situation it was not possible to allow an application partially u/s 16(3) of the Act, when all the land covered by the sale transaction was not eligible for it."

The Board, accordingly, declined to interfere and dismissed the petition. A copy of the order of the Board of Revenue, which is dated 20th July, 1967, is Annexure "5" to the writ application.

7. Being thus aggrieved, the petitioners filed the present application in this Court on the 18th September, 1967, The application came up for hearing before a Division Bench, where it was urged by Mr. Jagdish Pandey, learned counsel for the petitioners, that since the petitioners had no case in regard to plot No. 2661, their petition u/s 16(3) of the Act may be treated as confined to plot No. 738 only and that again in respect of the transfer made by Swaroop Narain Singh alone. In other words, his prayer was to treat this application u/s 16(3) as an application of pre-emption of only 3 decimals of land sold by Swaroop Narain Singh to the opposite party. But the stand thus taken by the petitioners was opposed on behalf of Respondent No. 1 on the footing that "as the application u/s 16(3) was in respect of consolidated plot of lands measuring 16 decimals, which was total of the lands conveyed by Swaroop Narain Singh and Lalmati Devi, it was not open to the petitioners to get their application treated as confined to only the sale effected by Swaroop Narain Singh in respect of 3 decimals only". It was also argued on behalf of the respondents that if no right of preemption could be enforced by the petitioners in respect of the land covered by the sale deed of Lalmati Devi (Respondent No. 3), then the position in law was that the vendee, namely respondent No. 1, had acquired the status of a co-sharer raiyat in respect of plot No. 738 as well, since .03 acre in that plot also was covered by Lalmati's sale deed standing in his favour, "and therefore the petitioners" application, even if confined to the sale deed of Swaroop Narain Singh, was liable to be defeated because the right of preemption does not prevail against the person having equal status". Before the Division Bench, the petitioners relied upon the Bench decision of this Court in *Phu-lena Prasad v. Jagdish Choudhury*, 1969 Pat LJR 418 where it was held, inter alia, that "subsequent acquisition of adjoining land within the period of limitation by any person will not make him a "Raiyat" of the adjoining land on the date of the transfer, so as to defeat the rights of pre-emption u/s 16(3) of the Act of those who were co-sharers or adjoining Raiyats of the land in question on the date of sale". The Division Bench in the present case felt that the view thus taken in *Pbulena Prasad's* case 1969 PLJR 418 (supra) was inconsistent with the observations of their Lordships of the Supreme Court in *Bishan Singh and Others Vs. Khazan Singh and Another*, and hence "it is necessary that the view taken by

this Court in the Bench decision referred to above be examined and settled authoritatively by a larger Bench". That is how the present Bench has been constituted for the purpose of deciding "whether the right of pre-emption which accrues to any co-sharer of the transferor or to any Raiyat holding the land adjoining the land transferred u/s 16(3) of the Act on transfer of land having been made to any person, who is neither the co-sharer nor the Raiyat of an adjoining land, can be defeated by the transferee himself acquiring before the date of the application the same status as the applicant. In other words, whether the right conferred u/s 16(3) of the Act should exist in the applicant on the date of the impugned transfer or on the date of the application to be made within three months from the date of the said transfer".

8. Another point which has been referred for our decision is whether the petition u/s 16(3) was fit to be dismissed as being not in accordance with law on the ground of "the description of the land as required (by?) Schedule I of Form LC. XIII, which is the prescribed form for application u/s 16(3) namely, whether the land transferred was held for agriculture or horticulture or was homestead land being wholly absent".

9. For a proper decision of the first of these points, it is necessary to quote the relevant provisions of Section 16 of the Act, which is headed Restriction on future acquisition by transfer, etc.

"16 (1)

(2)

(3) (i) When any transfer of land is made after "the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision:

Provided that where the application is rejected,

(iii) If the application is allowed....."

10. Upon a plain reading of subsection (3), it is apparent that the right which can be claimed under it is one of being put in possession of land on certain conditions being fulfilled. The first condition is that there has been a transfer of the land by

the execution and registration of a document of transfer. Secondly, the transferee is neither a co-sharer in respect of the transferred land nor a raiyat of any adjoining land. Thirdly, the person claiming to be entitled to be put in possession of the transferred land must himself be a co-sharer of the transferor or a raiyat holding land adjoining the land transferred. Fourthly, the applicant must present before the Collector an application in the prescribed manner for transfer of the land to him on the same terms and conditions which are contained in the document of transfer. Fifthly, the applicant must simultaneously file a challan showing a deposit in the Treasury of a sum equivalent to the purchase money mentioned in the document of transfer together with a further sum equal to ten per cent thereof, and, sixthly, the application together with the requisites, namely, a copy of the registered deed of transfer and the challan showing the deposit of the money must be filed before the expiry of a period of three months from the date of registration of the document of transfer. In other words, the right which is one of being put in possession of the transferred land can be acquired only upon fulfilment of the requisite conditions by a co-sharer or a raiyat of the adjoining land, and it can only be enforced against a person who is neither a co-sharer nor a raiyat of any adjoining land. The right does not accrue merely upon a transfer of the land having been effected. That is only one of the conditions for the accrual of the right to be put in possession of the transferred land. The right accrues only when all the remaining five conditions, mentioned above, are simultaneously fulfilled. It is quite clear, therefore, that the crucial date contemplated by Sub-section (3) is not the date of execution and registration of the document of transfer, but the date on which the application envisaged by the sub-section is made before the Collector. It is "with reference to the latter date that the Collector is called upon to decide whether all the requisite conditions have been fulfilled or not to enable him to put the applicant in possession of the transferred land. Let us consider a case in which a co-sharer of the transferred land or a raiyat of the adjoining land has ceased to answer this description between the period intervening the date of the transfer and the date of the application for being put in possession of it. In such a case it is plain that the Collector would be justified in rejecting the application on the mere ground that the applicant is no longer a co-sharer or a raiyat of the adjoining land. Similarly, if the Collector finds that subsequent to taking the transfer and before the filing of the requisite application under Sub-section (3) the transferee has himself become either a co-sharer or a raiyat of the adjoining land, then the Collector would be bound to reject the application on the ground that the transferee is no longer a person other than co-sharer or a raiyat of the adjoining land. The Collector can have no authority to dispossess one co-sharer or raiyat of the adjoining land and put in his place another person occupying the same status or possessing identical rights. In my opinion the period of three months mentioned in clause (f) of Sub-section (3) is only for the benefit of the applicant without in any way affecting any of the other conditions which the applicant must fulfil before he can be found fit to be put in possession of the transferred land. Sub-section (3) does not impose any bar upon any additional right being

acquired by the transferee within the aforesaid period of three months which might operate to disentitle the applicant from enforcing the right of reconveyance which he could otherwise claim under the law. To put it shortly, the right of reconveyance which accrues to a co-sharer or a raiyat of the adjoining land has to be judged with reference to the date on which a completed application under Sub-section (3) is filed, and not with reference to the date of the transfer or the date of the execution and registration of the document of transfer. If all the requisite conditions are found to exist on the date of the application, then, of course, the right of reconveyance is complete and it cannot be defeated by any subsequent transaction. For example, in *Rajkishore Singh v. Bhu-baneshwari Singh* 1968 BLJR 33, the right of an applicant under Sub-section (3) was sought to be defeated by a person who had become a raiyat of an adjoining land after the expiry of the period of three months from the date of the transfer. It was held by a Bench of this Court that once the "right of pre-emption becomes complete under Sub-section (3), it cannot be defeated at the instance of another person who becomes the raiyat of the adjoining land after the expiry of the period of three months from the date of the transfer. A question was also posed before that Bench as to what would be the position if some other person becomes a raiyat of an adjoining land within the aforesaid period of three months. But their Lordships did not decide that question and left it open for consideration on a future occasion, if necessary. It is quite clear, however, that if some other person becomes a co-sharer or a raiyat of an adjoining land before the right of the co-sharer to get a reconveyance of the transferred land becomes complete, and this can only be done by filing a valid application together with the requisites within the period of three months, then the application is bound to fail on the ground that the right is being claimed against a co-sharer or a raiyat of the adjoining land, and not a person "other than a co-sharer or a raiyat of adjoining land". Such a case, no doubt, arose in 1969 Pat LJR 418, upon which Mr. Pandey relies. In that case the right of the applicant u/s 16(3) was sought to be defeated on the ground that before the presentation of the application to the Collector of Muzaffarpur, the Opposite Party had become a raiyat of the adjoining land by taking settlement from the State of Bihar. Upon these facts their Lordships held that such subsequent acquisition of the adjoining land within the period of limitation would not make a person a raiyat of the adjoining land on the date of the transfer so as to defeat the right of pre-emption under Sub-section (3) of those who were co-sharers or adjoining raiyats of the land in question on the date of sale. This view was sought to be supported by certain observations which are to be found in 1968 BLJR 33 (supra). In that case after leaving undecided the question which I am presently considering, Narasimham C. J. observed:

"I may, however, indicate that in view of the clear provision of Clause (ii) of Sub-section (3) of Section 16. which requires the Court to give possession immediately to the person claiming the right of pre-emption without waiting for the disposal of his claim, and the further provision which requires payment of ten

per cent of solatium to the transferee in the event of the eventual rejection of the claim, the intention of the Legislature seems to be that, on the very date of the transfer, the co-sharer of the land transferred or the raiyat of the adjacent land gets the right to claim pre-emption. That right cannot be defeated by any subsequent event."

But upon the facts of the case which the learned Chief Justice was then dealing with, it is manifest that these observations were obiter. Besides, the subsequent event which Narasimham C. J. had in mind was quite clearly an event which had taken place subsequent to the presentation of a valid application for preemption under Sub-section (3). These observations of Narasimham C. J. cannot possibly apply to situation where the "subsequent event" has taken place before the right of the applicant to claim pre-emption has been perfected by the presentation of a completed application fulfilling all the requisite conditions envisaged in Sub-section (3). I am, therefore, of the opinion that the observations of Narasimham C. J. do not support the view taken by the Bench in Phulena Pra-sad's case. Further, the language of Sub-section (3) does not justify the view that the person who seeks to defeat the right of the applicant must have been a co-sharer or a raiyat of the adjoining land even on the date of the transfer, because as I have already shown, the crucial date for the application of Sub-section (3) is not the date of the transfer, but the date of the application. Until a proper application accompanied by the requisites is made, the right of the co-sharer or the raiyat of the adjoining land to obtain a reconveyance of the transferred land is inchoate and unperfected and such a right can legitimately be defeated by reason of an event happening subsequent to the transfer, the effect of which may be that the person against whom the right of reconveyance is sought to be enforced is no more a person other than a co-sharer or a raiyat of the adjoining land.

11. The same conclusion would emerge if we bear in mind the incidents of the right of pre-emption under the general law, which have been laid down by their Lordships of the Supreme Court in Bishan Singh and Others Vs. Khazan Singh and Another, . The following observations made at p. 841 of the report make the legal position clear beyond doubt:

"The plaintiff is bound to show not only that his right is as good as that of the vendee, but that it is superior to that of the vendee. Decided cases have recognised that this superior right must subsist at the time the pre-emptor exercises his right and that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee. Courts have not looked upon this right with great favour, presumably, for the reason that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To summarize : (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right.

(2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase, i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

12. It will thus be seen that it is of the very essence of the right of pre-emption that it is a very weak right, that it must subsist at the time when the pre-emptor seeks to exercise it and that it can be defeated if by that time the person against whom it is sought to be exercised has acquired a right or status which is equal to that of the pre-emptor. Mr. Pandey has urged that the law of preemption which has been embodied in Sub-section (3) of Section 16 of the Act has a larger content. But the analysis of the sub-section which I have given above does not bear this out. In my judgment, the sub-section has merely made some change in the procedural part of the law; it has left the substantive law of preemption unaltered. The substantive part of Clause (i) and its proviso make it abundantly clear that the right to obtain a reconveyance does not accrue until a proper application together with the requisites has been presented to the Collector, and until this is done the right remains inchoate, and there being no restriction upon any further transfer being made within the period of three months contemplated in the sub-section, the right is bound to be lost if by the time that the application is filed before the Collector the person who seeks the right himself loses the character of being a co-sharer or owner of the adjoining land or the person against whom the right is claimed acquires a status equal to that of the pre-emptor. The sub-section does not authorise the Collector to substitute one co-sharer or owner of the adjoining land for another co-sharer or owner of the adjoining land. It is, therefore, difficult to uphold the view expressed in Phulena Prasad's case 1969 PLJR 418 (supra) that the right of the pre-ernptor cannot be defeated by any subsequent event of the nature which I have just indicated.

13. Mr. Pandey has, however, drawn our attention to the decision of the Full Bench of this Court in Sheo Kumar Dubey Vs. Smt. Sudama Devi and Another, , wherein speaking for the Court, Kanhaiya Singh. J. observed at p. 129 as follows:

"It is thus evident that the entire land is clogged with an encumbrance in the shape of the right of pre-emption. It is not a personal right; the vendor possesses the property not absolutely, but subject to the right of pre-emption. The vendee thus purchases the property not as a whole free from, all liabilities, but as one impressed with a particular quality or incident. It creates a defect in the title of the vendor, and the vendee thus acquires an imperfect title, which is defeasible in the event of the neighbour or the partner exercising his right of preemption."

Relying strongly upon these observations, Mr. Pandey contended before us that the right of pre-emption embodied in Section 16(3) of the Act cannot be defeated by any subsequent event occurring within the " time limit mentioned therein. But I cannot persuade myself to accept this contention as correct. In *Sheo Kumar Dubey Vs. Smt. Sudama Devi and Another, , Kanhaiya Singh, J.* had no occasion to consider the question as to how the right of pre-emption accrues or the question as to how such a right can be or is lost. His Lordship was merely describing the legal incidents of a perfected right of preemption. He was not dealing with a situation arising out of some event which may have the effect of nullifying that right before any step is taken to enforce it. At any rate, his Lordship has nowhere said that the right of pre-emption cannot be lost but can be claimed even though by some method known to law the transferee comes to acquire the same or equivalent status vis-a-vis the disputed property as the pre-emptor before the latter has perfected his right of preemption by taking appropriate action under the law. I am, therefore, of the opinion that the observations of Kanhaiya Singh, J. lend no support to the contention of Mr. Pandey.

14. Thus, for the reasons which I have given, I have come to the conclusion, and I say this with great respect, that the decision of their Lordships in *Phulena Prasad's case*, 1969 Pat LJR 418 is opposed to the very concept of the law of pre-emption as embodied in Sub-section (3) of Section 16 of the Act, and the same - must, therefore, be overruled.

15. It follows that the first question referred to us must be answered thus: u/s 16(3) of the Act. the right of pre-emption which accrues to a co-sharer or a raiyat holding land adjoining the transferred land must subsist not only on the date of execution and registration of the document of transfer, but also on the date of the application which must be made within three months from the date of registration thereof. This right is ipso facto defeated if before the date of the application the transferee himself acquires the same status in relation to the transferred land as the applicant.

16. Let us now turn to the facts of the present case. The admitted position is that the total area of plot No. 738 is 0.24 acre, out of which respondent No. 1 had purchased .06 acre under the two sale deeds which were executed and registered in his favour on the 23rd October, 1962. Therefore, on the 5th December, 1962, when the petitioners made their application u/s 16(3) of the Act, respondent No. 1 was the raiyat not only in respect of the area of .03 acre in plot No. 738 covered by the sale deed of respondent No. 2, but also the raiyat in respect of an equivalent area in the same plot covered by the sale deed of respondent No. 3. If, therefore, the petitioners are permitted to seek a right of reconveyance only with respect to the area contained in the sale deed of respondent No. 2 then the position would be that they would be seeking enforcement of that right against a person who is himself a co-sharer of the transferred land. Upon its plain language, Section 16(3) does not contemplate

the enforcement of such a right of reconveyance with respect to only a part of the interest of the transferee. In this connection it is also relevant to bear in mind the objects which the Legislature had in mind in enacting Sub-section (3). One of the objects, as indicated by their Lordships of the Supreme Court in *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc.*, is

"to secure consolidation by giving the right of reconveyance to a co-sharer or a raiyat of the adjoining area so that the land in question can be used in the most advantageous manner and also to prevent fragmentation of the land".

This object cannot be secured if out of a total of .06 acre held by respondent No. 1 in plot No. 738, he is made to part with only .03 acres covered by the sale deed executed in his favour by respondent No. 2. By abandoning their claim in respect of the lands covered by the sale deed of respondent No. 3, the petitioners are, therefore, faced with the situation that they are seeking to enforce a right of reconveyance against a person of equal status, and that also in respect of only a part of his interest in plot No. 738. Quite clearly such a right of reconveyance cannot be conceded to them.

17. Mr. Pandey, however, tried to bring the case of the petitioners within the fifth incident of the right of preemption as explained by their Lordships of the Supreme Court in *Bishan Singh and Others Vs. Khazan Singh and Another*. The argument is that the petitioners have superior right to that of respondent No. 1 in relation to plot No. 738, inasmuch as they were co-sharers of his vendors, while respondent No. 1 had no interest in that plot prior to the purchases made by him on the 23rd October, 1962. But the distinction which Mr. Pandey seeks to make between a co-sharer by birth and a co-sharer by acquisition is not relevant to the enforcement of a right of pre-emption. The right of pre-emption has to be decided on the basis of the state of affairs prevailing on the date of the application for making the reconveyance, and on that date in the present case, respondent No. 1 was as much a co-sharer of plot No. 738 as the petitioners themselves. It is of no consequence that the petitioners held a larger share in that plot as compared to respondent No. 1 or that respondent No. 1 acquired his interest subsequently to the acquisition of the interest in the plot by the petitioners. Mr. Pandey had in mind the concept of the preferential claim of a co-sharer in a dwelling house as recognised in Section 4 of the Partition Act, 1893, under which it is open to any member of the family who is entitled to a share in the dwelling house to buy over the share of a stranger transferee at a valuation made by the Court. But no such concept can legitimately be applied in dealing with an application u/s 16(3) of the Act. I have, therefore, no hesitation in overruling the contention of Mr. Pandey that the rights of the petitioners in plot No. 738 stood on a footing superior to that of respondent No. 1 on the date of their application u/s 16(3).

18. Having failed to persuade us to hold that the petitioners are entitled to claim the right of reconveyance only with respect to the area of .03 acre in plot No. 738 covered by the sale deed of respondent No. 2, Mr. Pandey argued that the

petitioners should be permitted to claim reconveyance even with respect to the other area of .03 acre in plot No. 738, which is covered by the sale deed of respondent" No. 3. According to Mr. Pandey, this should present no difficulty because the petitioners have already deposited the full amount of the consideration money of both the sale deeds of the 23rd October, 1962 and the further sum of Rs. 105/- representing 10 per cent of the total consideration money, and the petitioners would have no objection if the whole of this money were to be treated as the requisite deposit to enable them to obtain reconveyance of the whole of .06 acre in plot No. 738 only. But that obviously lands Mr. Pandey in another difficulty. Both under the general law of pre-emption and the provision of Section 16 (3), the reconveyance has to be made on the same terms and conditions as are contained in the document of transfer. To permit the petitioners to obtain a reconveyance with respect to only .03 acre in plot No. 738 covered by the sale deed of respondent No. 3 would amount to striking a new bargain for the parties by splitting up the terms and conditions contained in the sale deed of respondent No. 3. This is certainly not contemplated by Sub-section (3) of Section 16 of the Act. It is manifest that in respect of the land covered by the sale deed of respondent No. 3. the petitioners must claim the right of reconveyance with regard to the whole of the property to which it relates or to none at all.

19. Having realised this difficulty in his way, Mr. Pandey went back to tally upon the concession which the petitioners had made before the Board of Revenue as well as before the Division Bench, namely that they had no right of reconveyance in plot No. 2661, and endeavoured to show that the petitioners were co-sharers even with respect to that plot so that it was open to them to ask for reconveyance with regard to the whole of the property covered by the sale deed of respondent No. 3. In this way Mr. Pandey sought to assail the finding of the Revenue authorities which is to the effect that the petitioners have no interest in plot No. 2661, and he sought to do so on the basis of a document which is Annexure "6" to the writ application purporting to be a true copy of the Form M of the office of the Anchal Adhikari of Bikram. Unfortunately, however, this document was not produced before the Revenue authorities and it has been filed for the first time in this Court. In paragraph 5 of the counter-affidavit of respondent No. 1 it has been asserted that "Annexure No. 6 was not produced before any of the authorities and it is a got up document after the petitioners had lost before the Board of Revenue". In spite of this assertion made in the counter-affidavit of respondent No. 1 as far back as the 15th Mr. Pandey took no step to challenge its correctness by producing before us the original document of which Annexure "6" purports to be a true copy. It has so also not been shown to us that this document was filed at any stage in the proceeding before the Revenue authorities. Therefore, on the basis of a document of such doubtful authenticity it would be highly unsafe to record a finding that the petitioners are co-sharers in respect of plot No. 2661 also. Even assuming, however, that the stand now taken by the petitioners is correct, the fact remains that it was admitted on behalf of

the petitioners before the Commissioner that respondent No. 1 was a raiyat in respect of land adjoining plot No. 2661 so that the petitioners can claim no preferential right in respect of that plot.

20. Thus, considering the case from all its aspects, the conclusion is irresistible that the petitioners are not entitled to claim a right of reconveyance with respect to any portion of plot No. 738 or with respect to plot No. 2661, and that alone is sufficient to merit the dismissal of the present writ application.

21. In this view, it is hardly necessary to enter upon a discussion of the second question formulated for our decision by the Division Bench. However, we have looked into the description of the land as given in Schedule I of Form LC. VIII which the petitioners had filed before the Collector on the 29th December, 1962. Therein plot No. 738 has been described as homestead and plot No. 2661 as agricultural. I am inclined to think that this amounts to sufficient compliance with the requirement of Schedule I of Form LC. XIII. It is, therefore not correct to say, as was urged before the Division Bench, that the description of the land "whether held for agriculture, horticulture or homestead" was wholly absent in Schedule I of the prescribed form. In this view of the matter, I do not feel called upon to deal with the decision of Untwalia and Kanhayaji, JJ. in Ganesh Prasad v. Jugeshwar Tewari, 1969 Pat LJR 284, upon which reliance was placed on behalf of respondent No. 1 before the Division Bench or to see whether it runs counter to the decision of the Supreme Court in Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., , as suggested before us by Mr. Pandey.

In the result, I find no merit in this application and it is, accordingly, dismissed. But in the circumstances, there will be no order as to costs.

A.B.N. Sinha, J.

22. I agree.

Anwar Ahmad, J.

23. I also agree and have nothing to add.