

(2002) 07 JH CK 0055
In the Jharkhand High Court
Case No : L.P.A. No. 481 of 1997 (R)

Surendra Sao and Others

APPELLANT

Vs

Sumitra Devi and Another

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

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

Citation : (2002) 50 BLJR 1601

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : A. Sahay, for the Appellant; B.K. Prasad and A.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya and Lakshman Uraon, JJ.—The respondents-appellants being not satisfied with the judgment dated 18th September, 1997 passed by learned Single Judge in C.W.J.C. No. 306 of 1985 (R), have preferred this appeal.

2. Learned Single Judge held that the application for pre-emption preferred by deceased father of appellant Nos. 1 to 4 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was not maintainable.

3. The land in question measuring 6.52-1/2 decimals under Khata Nos. 57 and 151 of village Sakrauli belonged to father of writ petitioners namely Chamar Sahu. Said Chamar Sahu executed a registered sale-deed on 6th September, 1979 in favour of his two daughters - writ petitioners namely Sumitra Devi and Dukhni Devi for a consideration of Rs. 6,500/-.

4. One Pratap Sahu (father of appellant Nos. 1 to 4 and husband of appellant No. 5) preferred the application for preemption u/s 16(3) of the Act, 1961 claiming him to be the adjoining raiyat of land in question. The application was registered

as case No. 40 of 1979 and was allowed in favour of pre-emptor Pratap Sahu (since deceased). The writ petitioners preferred Revenue Appeal No. R-15 of 1980-81 which was dismissed. The Revision Appeal (Ranchi) No. 137 of 1983 preferred by writ petitioners was dismissed for default on 7th June, 1983, and was not restored vide order dated 11th June, 1989. Faced with such situation, writ petition C.W.J.C. No. 306 of 1985 (R) was preferred by writ petitioner which was allowed by impugned judgment dated 18th September, 1987 on the ground that the application of pre-emption was not maintainable in absence of the transferor (Chamar Sahu).

5. The only question raised in the present appeal, is whether an application for pre-emption u/s 16(3) of the Act, 1961 is maintainable in absence of transferor/vendor of land or not?

6. The issue aforesaid stands decided by Division Bench of this Court in the case of Gudan Yadav v. Sitaram Chaudhary reported in 1973 BLJR 734, wherein the Court held that the transferor of land is necessary party to a pre-emption proceeding.

7. The counsel for the appellant referred a full Bench decision of Patna High Court in the case of Jugal Kishor Singh v. State of Bihar reported in 1985 PLJR 383. That was a case in which the real purchaser was not impleaded, but the alleged Benami Holder. The full Bench held that once it is established as to who is the real purchaser, if the Benami Holder is a party to the proceeding, it is not necessary to determine the issue whether the real purchaser is a party to the proceeding or not. The order and decree is bounding on the ostensible owner.

8. In the case aforesaid, no finding was given by full Bench relating to maintainability of an application for pre-emption in absence of transferor of the land or not.

9. As no case made out to differ with decision of Division Bench in Gudan Yadav v. Sitaram Chaudhary reported in 1973 BLJR 734, the application for pre-emption being not maintainable in absence of the transferor of the land in question, learned Single Judge rightly allowed the writ petition.

10. The appeal is, accordingly, dismissed. However, there shall be no order as to costs.