

## In The Court of Deputy Commissioner, Ramgarh

Land Ceiling Appeal No. 10/2011

Manorma Devi & 8 others Versus Deodhari Mahto & Others

### Order

29.10.13

The present Pre-emption appeal is directed against the order dated 07-03-2011 in which the lower Court had allowed the petition of Deodhari Mahto and others under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling area and Acquisition of Surplus Land) Act, 1961.

The disputed land is as follows :-

<u>P.S.</u>	<u>Village</u>	<u>Khata No.</u>	<u>Plot No.</u>	<u>Area</u>
Ramgarh	Lodhma	74	437	1.87 Acre
			431/2074	1.28 Acre

It is the case of the appellants that Gautam Singh transferred and executed the following deeds : -

<u>Vender</u>	<u>Vendee</u>	<u>Village</u>	<u>Khata No.</u>	<u>Plot No.</u>	<u>Area</u>	<u>Date</u>
1.Gautam Singh	Hiroj Singh	Lodhama	74	437	7dec	11.08.09
			74	431/2074	32 dec	
2.Gautam Singh	Manorma Devi	Lodhama	74	437	39.75 dec	11.08.09

It is also stated that appellant No.- 1 & 2 namely Manorma Devi and Hiroj Singh are landless persons and have purchased the land for construction of house. It is said that Respondent No.- 1 to 9 have filed a petition under Section 16(3) of B.L.R. Act 1961 against appellant No.- 3 on 13.08.2009 claiming themselves to be the adjacent raiyat and co-sharer of vended land, which was later allowed. The Appellants further mention that Appellant No.- 3 executed two deeds in favour of Appellant No. 1 & 2 on 11.08.2009, but the same was registered on 13.08.2009 due to link failure. In the instant case the land has been transferred by executing sale deed before filing of the application of pre-emption and consequently the vendees become the owners of land. Further case of the appellants narrates that the respondents are neither adjacent raiyat nor co-sharer of the land in question.

In the rejoinder to the appeal petition. the respondents, it is stated that Gautam Singh sold the land in question to his wife Manorma Devi and his nephew Hiroj Singh through registered deeds dated 13.08.2009. Deodhari Mahto and

others also filed petition u/s 16(3) on the same date. However the DCLR, Ramgarh allowed the petition in his order dated 02.07.2010.

The learned counsel for the Appellant argued at length and cited a ruling reported in AIR 1973, Patna wherein then lordships held that a sale deed cannot be said to have been hit by "Doctrine of lispendens" simply because it is registered after filing of the suit u/s 16(3)(1) of B.L.R. Act 1961, though the deed was executed prior to filing. It was also pleaded that the DCLR erred in deciding the legal Provisions contained in Section 47 of the Registration Act.

The counsel for the respondent pleaded That the respondents are co-sharers and adjacent raiyats. They filed the case at the right time. It was further urged that the appellants sold the land to defeat the case under Section 16 (3) (1).

It is useful to go through the provisions of pre-emption. Section 16(3)(1) of Bihar Land Reforms (F.C.A. A.S.L.) Act, 16 (3)(1) says,

(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 adjoin 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 Collectors unless the purchase money together with a sum equal to ten percent 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.

Section 60 of the Registration Act, 1908 provides that..

**"Certificate of Registration - (1)** After such of the provisions of section 34, 35, 58 and 59 as apply to any document presented for registration have been complied with,

the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page 4 of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned".

It has been held in Mir Rafique V. Additional Member, Board of Revenue, Bihar 1981 BLJ 51, that where an application claiming pre-emption and the transfer by transferee were made simultaneously on the same date, in that event the pre-emptor and the subsequent transferee stand on the same footing. Therefore, unless the preemptor shows that his right was still superior to that of vendee (subsequent transferee), he cannot be allowed to succeed because for both the parties have equal rights then the right of the pre-emptor being a much weaker right, must give way to the right acquired by the vendee, who must be given preference over the pre-emptor. Therefore, the claim of pre-emption was rejected on this ground. In the present case also, the pre-emptors have failed to prove that their rights are superior to that of the vendees. They have even not proved that they are co-sharers or raiyats of adjoining land.

When a sale deed is executed prior to the filing of an application of pre-emption, merely, because it is registered subsequent to the filing of the application it can't be said to have been hit by the doctrine of lis pendens, as the transferee becomes the owner of the property in view of the provisions of law contained in section 47 of the Registration Act prior to the date of filing of the application.

In view of the reasons discussed above, the appeal is allowed and the order of the lower court is set aside.

Dictated and Corrected.

Deputy Commissioner,  
Ramgarh.

Deputy Commissioner,  
Ramgarh.