

## Abani Pradhan Vs State of Jharkhand

**Court:** JHARKHAND HIGH COURT

**Date of Decision:** Oct. 17, 2016

**Acts Referred:** Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Section 16(3)

**Citation:** (2017) 1 AIRJharR 771 : (2017) 1 JBCJ 468 : (2017) 2 JCR 647 : (2017) 2 JLJR 273

**Hon'ble Judges:** D.N. Patel and Rajesh Shankar, JJ.

**Bench:** Division Bench

**Advocate:** Mr. Mahesh Tewari, Advocate Mr. Prasenjit Mahato, Advocate, for the Appellant; Mr. Sreenu Garapati, J.C. to S.C. (Mines), for the State; Mr. Rahul Gupta, Advocate Ms. Niyati Sah, Advocate, for the Respondent Nos. 5&6

**Final Decision:** Dismissed

### Judgement

Per D.N. Patel, J.â€”This Letters Patent Appeal has been preferred by original petitioner, being aggrieved and feeling dissatisfied by the judgment

and order delivered by the learned Single Judge in W.P.(C) No. 1619 of 2012 dated 8th July 2015, whereby the petition preferred by this

appellant has been dismissed and, hence, the original petitioner has preferred the present Letters Patent Appeal. Original petitioner (this appellant)

is claiming right of pre - emption i.e. to purchase the property of his neighbour. This claim is raised, after several years, after which his neighbour

(Respondent No. 7) sold away the property.

#### 2. FACTUAL MATRIX

ÃˆÃˆ½ On 21st July, 1994, the Respondent No. 7 - Prahlad Kumhar transferred the land bearing Plot No. - 723, Khata No. - 80, Thana No. - 100,

P.S. - Rajnagar, Village - Kalajharna, District Singhbhum West to the respondent no. 5 - Smt. Khiroda Devi by registered sale - deed. This is the

sale of the property from Respondent No. 7 to Respondent No. 5.

ÃˆÃˆ½ It also appears from the facts of the case that Respondent No. 5 - Smt. Khiroda Devi entered into registered gift - deed in favour of

Respondent No. 6 - Bindeshwar Pradhan on 16th October, 2000.

ÃˆÃˆ½ This appellant being a neighbour, claims right of pre - emption from Respondent No. 7, under Section 16(3) of the Bihar Land Reforms

(Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as ""the Act, 1961"", for the sake of brevity) upon the

aforesaid property.

~ Application preferred by this appellant is bearing Land Ceiling Case No. 15 of 2004 - 05. This application was preferred before Land

Reforms Deputy Collector, Seraikella and the same was allowed by the LRDC vide order dated 27th November, 2004 (Annexure - 5 to the

memo of this Letters Patent Appeal).

~ In pursuance of this order, sale - deed has been entered into in favour of this appellant which is dated 18th May, 2005 (Annexure - 6).

~ Being aggrieved and feeling dissatisfied by an order passed by LRDC dated 27th November, 2004, the Respondent No. 5 - Smt. Khiroda

Devi preferred an appeal under Section 30 of the Act, 1961 being Land Ceiling Appeal No. 9 of 2005 - 06, before the Deputy Commissioner,

Seraikella.

~ The appeal preferred by Respondent No. 5 - Smt. Khiroda Devi was allowed via order dated 14th September, 2007 (Annexure - 7 to the

memo of LPA) and the order passed by LRDC dated 27th November, 2004 was quashed and set - aside.

~ Against the order passed by Deputy Commissioner, Seraikella dated 14th September, 2007, Writ Petition (C) No. 5936 of 2007 was

preferred by this appellant and the same was disposed of by this Court vide order dated 31st March, 2008.

~ This appellant, thereafter preferred Revision Application bearing No. 27 of 2008 before Member, Revenue Board, against the order passed

by Deputy Commissioner, Seraikella.

~ This Revision Application No. 27 of 2008, preferred by this appellant was dismissed by Member, Revenue Board vide order dated 6th

January, 2012.

~ Being aggrieved and feeling dissatisfied by the said order of Member, Board of Revenue, this appellant preferred W.P.(C) No. 1619 of 2012

before this Court and this writ petition has been dismissed by the learned Single Judge vide judgment and order dated 8th July, 2015.

~ Being aggrieved and feeling dissatisfied by the judgment and order delivered by the learned single Judge in W.P.(C) No. 1619 of 2012 dated

8th July, 2015, the present Letters Patent Appeal has been preferred by the original petitioner for establishing his right of pre - emption to purchase

the property as narrated herein above against the transferors of the property who are Respondent Nos. 5 and 6 in this Letters Patent Appeal.

### 3. ARGUMENT CANVASSED BY THE COUNSEL FOR THE APPELLANT (ORIGINAL PETITIONER).

~ Counsel appearing for the appellant (original petitioner) submitted that this appellant is an adjoining owner of the property and, hence, he has

got the right of pre - emption to purchase Plot No. 723, Khata No. 80, P.S. - Rajnagar, District - Seraikella - Kharsawan situated at Village -

Kalajharna for which an application was preferred under Section 16(3) of the Act, 1961 before Land Reforms Deputy Collector being Land

Ceiling Case No. 15 of 2004 - 05 which was allowed by the LRDC vide order dated 27th November, 2004. Thereafter, sale - deed has also

been executed which is dated 18th May, 2005 which is at Annexure - 6 to the memo of this LPA. This sale - deed cannot be brushed - aside by

Deputy Commissioner, Seraikella vide his order dated 14th September, 2007 (Annexure - 7). This aspect of the matter has not been properly

appreciated by the learned Single Judge and, hence, judgment and order delivered by the learned Single Judge in W.P.(C) No. 1619 of 2012

deserves to be quashed and set - aside.

~ It is submitted by counsel for the appellant (original petitioner) that the time limit within which the application is to be preferred is three months

from the date of registration of the document and from the date of knowledge of such registration of the document. No sooner did this appellant

came to know about the registration of the sale - deed for the aforesaid property, the right of pre - emption has been claimed and, hence, there is

no delay in preferring such an application.

~ It is further submitted by counsel for the appellant (original petitioner) that this appellant has also now sale - deed in his favour which is dated

18th May, 2005 (Annexure - 6). This aspect of the matter has not been properly appreciated by the Deputy Commissioner, Seraikella, Member,

Revenue Board as well as by the learned Single Judge and, hence also, the judgment and order delivered by the learned Single Judge deserves to

be quashed and set - aside.

4. ARGUMENT CANVASSED BY THE COUNSEL APPEARING FOR THE RESPONDENT NOS. 5 & 6 WHO ARE MAIN

CONTESTING RESPONDENTS.

~ Counsel appearing for the Respondent Nos. 5 and 6 submitted that initially, the property was transferred by Respondent No. 7 - Prahlad

Kumhar by registered sale - deed in favour of Respondent No. 5 - Smt. Khiroda Devi by registered sale - deed dated 21st July, 1994 and

thereafter, Respondent No. 5 has entered into a registered gift - deed dated 16th October, 2000 in favour of Respondent No. 6. Thus, the

property in question has already been transferred from Respondent No. 7 to Respondent No. 5 and from Respondent No. 5 to Respondent No. 6

much earlier in point of time. The correctness and genuineness of these two documents have not been questioned by any one nor anybody has

stated that these are the fraudulent documents or they are fabricated documents. After the property is being transferred to Respondent No. 6,

approximately four years period has been lapsed and thereafter, right of pre - emption is being claimed by this appellant and an application is

preferred under Section 16(3) of the Act, 1961 before LRDC which was allowed by LRDC vide order dated 27th November, 2004. There was

no proper and effective service of notice upon Smt. Khiroda Devi and, hence, appeal was preferred by Smt. Khiroda Devi Respondent No. 5

being Land Ceiling Appeal No. 9 of 2005 - 06 and all the facts of earlier transfers of property in question were highlighted before Deputy

Commissioner, Seraikella and ultimately, appeal was allowed in favour of Smt. Khiroda Devi Respondent No. 5 vide order dated 14th

September, 2007 (Annexure - 7). LRDC had not appreciated the facts about the transfers of the property in question from Respondent No. 7 to

Respondent No. 5 in the year 1994 and from Respondent No. 5 to Respondent No. 6 in the year 2000. This aspect of the matter has been

properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant and, hence, this Letters Patent

Appeal may not be entertained by this Court.

Ã-Ã½ Counsel appearing for the Respondent nos. 5 and 6 has submitted that in fact, Section 16(3) is never giving any right to this appellant to

purchase the property under the so - called right of pre - emption.

Ã-Ã½ The revision application preferred by this appellant being Revision Application No. 27 of 2008 has also been dismissed by Member, Revenue

Board against the order passed by Deputy Commissioner, Seraikella. Thus, there is consistent finding of fact by: -

(a) Deputy Commissioner, Seraikella in Land Ceiling Appeal No. 9 of 2005 - 06 vide order dated 14th September, 2007 (Annexure - 7);

(b) order passed by Member, Revenue Board in Revision Application No. 27 of 2008 who dismissed the appeal preferred by this appellant vide

order dated 6th January, 2012 (Annexure - 8);

(c) the order passed by the learned Single Judge in W.P.(C) No. 1619 of 2012 vide judgment and order dated 8th July, 2015.

Ã-Ã½ Thus, there are consistent finding of facts and, hence, this Letters Patent Appeal may not be entertained by this Court.

Ã-Ã½ Counsel appearing for the Respondent Nos. 5 and 6 has relied upon the decisions rendered by the Hon"ble Supreme Court : -

(a) (2007) 10 SCC 448;

(b) (2008) 10 SCC 153;

Ã-Ã½ On the basis of the aforesaid decisions, it is submitted by the counsel for the Respondent Nos. 5 and 6 that the right of pre - emption is a very

weak and feeble right vis - a - vis the constitutional right to hold the property guaranteed under Article 300 - A of the Constitution of India and,

hence also, this Letters Patent Appeal may not be entertained by this Court for grant of right of pre - emption in favour of this appellant against

transfers already executed, much earlier in point of time, as stated herein above in favour of Respondent No. 5 and thereafter, in favour of

Respondent No. 6, in the year 1994 and in the year 2000 respectively, in comparison with an application preferred in the year 2004 - 05 for claim

of right of pre - emption.

#### 5. REASONS: -

Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this writ

petition mainly for the following facts and reasons: -

(i) This appellant is an original petitioner. Being neighbour, he claims right of pre - emption, for the purchase of the property, situated at Village -

Kalajharna bearing Plot No. 723, Khata No. - 80, P.S. - Rajnagar, District - Seraikella - Kharsawan, State of Jharkhand, for which an

application was preferred under Section 16(3) of the Act, 1961 being Land Ceiling Case No. 15 of 2004 - 05 before the Land Reforms Deputy

Collector.

(ii) It appears that Respondent No. 7 - Prahlad Kumhar owner of the impugned property, entered into a registered sale - deed with Respondent

No. 5 dated 21st July, 1994. Thus, the property in question was already transferred to Respondent No. 5 by registered sale - deed dated 21st

July, 1994. No such plea has been raised by this appellant that this registered sale - deed is entered into between Respondent No. 7 and

Respondent No. 5, was under any coercion, threat or undue influence nor there is any allegation that it is fabricated document.

(iii) The Respondent No. 5 - Smt. Khiroda Devi, after six years of the registered sale - deed, in her favour, transferred the property to R

espondent No. 6 by registered gift - deed dated 16th October, 2000. There is no allegation by this appellant that this registered gift - deed is a

fabricated document.

(iv) Now, after four years of this registered gift - deed a right of pre - emption is claimed by this appellant for which an application is preferred

under Section 16(3) of the Act, 1961 being Land Ceiling Case No. 15 of 2004 before the Land Reforms Deputy Collector, Seraikella -

Kharsawan, who allowed the application in favour of this appellant vide order dated 27th November, 2004 (Annexure - 5) and thereafter,

registered sale - deed has also been entered into in favour of this appellant dated 18th May, 2005, without taking note of the earlier two transfers

of the very same property, initially in favour of the Respondent No. 5 - Smt. Khiroda Devi, in the year 1994 and thereafter, in favour of

Respondent No. 6 - Bindeshwar Pradhan by registered gift - deed dated 16th October, 2000. This is not permissible in the eye of law. This is an

error apparent on the face of the record committed by LRDC. Earlier two transfers by registered deeds of the very same property have not been

cancelled by any competent authority. Earlier two transfers by registered deeds remained intact and as they are one is registered sale - deed of

the year 1994 and another is registered gift - deed of the year 2000. LRDC has passed an order in the year 2004 without even taking cognizance

of these two documents which are registered deeds and for the very same property, another sale - deed has also been entered into in favour of this

appellant by LRDC dated 18th May, 2005 and, hence, the judgment and order passed by LRDC dated 27th November, 2004 upon an

application bearing Land Ceiling Case No. 15 of 2004 - 05, preferred by this appellant under Section 16(3) has been rightly quashed and set -

aside by the Deputy Commissioner, Seraikella in appeal preferred by Respondent No. 5 - Smt. Khiroda Devi.

(v) The Land Ceiling Appeal No. 9 of 2005 - 06 preferred by Smt. Khiroda Devi under Section 30 of the Act, 1961 has been allowed by Deputy

Commissioner, Seraikella vide order dated 14th September, 2007. No error has been committed by the said authority in deciding Land Ceiling

Appeal No. 9 of 2005 - 06 vide order dated 14th September, 2007 because already, much earlier in point of time the property in question was

transferred by two different registered deeds. Application has been preferred for claiming right of pre - emption at much later in point of time.

(vi) For the ready reference, Section 16(3) of the Act, 1961 reads as under : -

16(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 the 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 percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made, the cosharer 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, the co - sharer or the riyat as the case may

be, shall be evicted, from land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal

to ten percent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by any order direct the transferee to convey the land in favour of the applicant by executing and

registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the

procedure, prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.

(vii) In view of the aforesaid provision of Section 16(3), this appellant is claiming a right of pre - emption. No right of pre - emption has been

granted by sub - section (3) of Section 16 of the Act, 1961 to this appellant. In fact, Section 16 of the Act, 1961 is nothing, but, the restriction on

future acquisition by transfer at certain account. The Act, 1961 is concerned with the ceiling limit for holding the land. Every rule has its own

exception and, therefore, under the exceptional circumstances, beyond the limits of ceiling area permitted by the Act of 1961, under Section 4 of

the Act, the land can be retained by the holder in the circumstances as mentioned under Section 16(3) of the Act, 1961, but, there is nothing like a

right of pre - emption granted by Section 16 (3) to this appellant.

(viii) It further appears from the facts of the case that there is a consistent finding of facts by Deputy Commissioner, Seraikella while deciding Land

Ceiling Appeal No. 9 of 2005 - 06 as also while deciding Revision Application No. 27 of 2008 by Member, Revenue Board, vide order dated

6th January, 2012 as well as vide order dated 8th July, 2015 by the learned Single Judge while deciding W.P.(C) No. 1619 of 2012. This

consistent finding of fact is to the effect that there are earlier two transfers of the very same property, one in the year 1994 and another is in the

year 2000 in favour of Respondent No. 5 and in favour of Respondent No. 6 respectively and the application preferred by this appellant for

claiming right of pre - emption is at a much belated stage i.e. in the year 2004 - 05 and, hence, we see no reason to take any other view than what

is taken by the learned Single Judge while dismissing W.P.(C) No. 1619 of 2012 vide order dated 8th July, 2015, because the genuineness of the

two transfers by registered deeds have never been questioned by this appellant, because never it is contended by this appellant that earlier two

transfer deeds in favour of Respondent No. 5 and Respondent No. 6 are fabricated or concocted documents.

(ix) It has been held by the Hon"ble Supreme Court in the case of Lachhman Dass v. Jagat Ram & Ors. reported in (2007) 10 SCC 448, in

paragraph no. 16 as under : -

16. Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been

taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300 -

A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the

provisions of the statute. If a superior right to hold a property is claimed, the procedures therefor must be complied with. The conditions precedent

therefore must be satisfied. Even otherwise, the right of pre - emption is a very weak right, although it is a statutory right. The court, while granting

a relief in favour of a pre - emptor must bear it in mind about the character of the right vis - a - vis the constitutional and human right of the owner

thereof.

(emphasis supplied)

(x) In view of the aforesaid decision, the right of preemption is a very weak right vis - a - vis the constitutional right guaranteed under Article 300 -

A of the Constitution of India. It has been further held by the Hon"ble Supreme Court that to hold the property is a constitutional right under

Article 300 - A of the Constitution of India and it is also a human right. Thus, the right of pre - emption cannot be claimed by this appellant when

the original owner of the property is claiming his constitutional as well as human right to hold the property in question, especially when the land in

question, is transferred by registered deeds of the year 1994 and of the year 2000 as stated herein above.

(xi) It has been held by the Hon"ble Supreme Court in the case of Kumar Gonsusab & Ors. v. Mohammed Miyan @ Baban & Ors.

reported in (2008) 10 SCC 153, in paragraph nos. 19 and 20 as under : -

19. In view of our discussions made herein above, we are, therefore, of the view that in view of the admitted fact that merely agreement for sale

was entered into by Appellant 3 with Appellants 1 and 2 in respect of the suit property, the question of exercising any right of pre - emption in the

respondents could not arise at all. As already observed, a suit for pre - emption brought on the basis of such an agreement for sale must be held to

be without any cause of action as there was no right of pre - emption in the respondents which could be enforced under the law. We should not be

unmindful of the fact that there are no equities in favour of a pre - emptor, whose sole object is to disturb a valid transaction by virtue of the rights



created in him by statute. It is well settled that it would be open to the pre - emption, to defeat the law of pre - emption by any legitimate means,

which is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre - emption by all lawful

means.

20. That apart, it is now well settled that the right of pre - emption is a weak right and is not looked upon with favour by courts and therefore the

courts cannot go out of their way to help the pre - emptor.

(emphasis supplied)

(xii) In view of the aforesaid decision, if there is no fraud on the part of the vendor or the vendee and the property in question has already been

transferred by absolutely legal procedure, by registered deeds, at a much belated stage, no right of pre - emption can be granted to this appellant.

In fact, no such right has ever been conferred to this appellant, as argued out by the counsel for the appellant under sub - section (3) of Section 16

of the Act, 1961. In fact, Section 16(3) of the Act, 1961 is absolutely for another purpose i.e., if any person wants to retain the land beyond the

ceiling limit then procedure has been carved out and the restrictions imposed under Section 16(1) of the Act, 1961 is diluted to that effect. This

appellant could not establish his right of pre - emption under Section 16(3) of the Act, 1961. These aspects of the matter have been properly

appreciated by the Deputy Commissioner, Seraikella while deciding Land Ceiling Appeal No. 9 of 2005 - 06 vide order dated 14th September,

2007 as well as by Member, Revenue Board while deciding the Revision Application No. 27 of 2008 vide order dated 6th January, 2012 and has

also been properly appreciated by the learned Single Judge while dismissing W.P.(C) No. 1619 of 2012 vide order dated 8th July, 2015. We see

no reason to take any other view than what is taken by the learned Single Judge while dismissing W.P.(C) No. 1619 of 2012.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge

while dismissing W.P.(C) No. 1619 of 2012 vide order dated 8th July, 2015. There is no substance in this Letters Patent Appeal and, hence, the

same is, hereby, dismissed.