

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.16 of 2025

In
Civil Writ Jurisdiction Case No.18468 of 2021

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Shailendra Kumar Jaiswal @ Vinod Kumar Son of Arjun Sah Resident of
Village-Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.

... .. Appellant/s

Versus

1. Binita Ojha Wife of Yogesh Kumar Ojha Resident of Buxar Town, P.O., P.S. and District-Buxar.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
4. The Bihar Land Tribunal, Patna.
5. The Commissioner, Patna.
6. The Collector, Kaimur at Bhabhua.
7. The Deputy Collector, Land Reforms, Mohania.
8. Most. Laxmi Jaiwal, wife of Late Abhya Narayan Jaiswal, resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.
9. Priasi, minor daughter of Late Abha Narayan Jaiswal, Resident of Village Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.
10. Rajshree, Minor Daughter of Late Abha Narayan Jaiswal Represented through their Mother and Natural Guardian Most. Laxmi Jaiswal. Resident of Village-Didkhili, P.S. Durgawati, P.O. Akhori, District-Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Parth Gaurav, Adv. Mr. Divya Prakash, Adv. Mr. Kumar Saurav, Adv. Mr. A K Pandey, Adv. Mr. Rahul Kumar, Adv.
For the Respondent/s	:	Mr. Akash Raj, AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 13-03-2026

Learned Advocate for the respective parties are
present.



2. The challenge in the present intra-court appeal is made to an order of the learned Single Judge dated 11.11.2024 passed in CWJC No. 18468 of 2021, wherein the learned Court after hearing the parties has been pleased to set-aside the order dated 06.08.2021 passed in BLT Case No. 547 of 2019.

3. The brief facts which led to the filing of the present Letters Patent Appeal, as emerged from the records are that the appellant-respondent no. 7 claiming to be a pre-emptor had filed petition under Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as, "Ceiling Act, 1961") before the Deputy Collector, Land Reforms, Mohania. The appellant-respondent no. 7 asserted his right of pre-emption to the sole land of Khata No. 318, Plot No. 2498 having an area of 0.45 acres situated at Mauza Awahariya purchased by the writ petitioner-respondent no. 1 by a registered sale deed dated 24.11.2015 from respondent no. 8 in the writ petition.

4. It is stated that the father of the pre-emptor namely, Arjun Sah after partition of family through Partition Suit No. 495 of 2012 executed a registered sale deed with respect to some adjacent land, in question, and in the aforesaid premise, the respondent no. 7-appellant herein prayed that the pre-



emption be allowed in his favour, on account of he being adjoining raiyat. The writ petitioner appeared and filed her written objection that no sale deed was ever executed in favour of the pre-emptor or his father, hence he is not an adjoining raiyat. Moreover, the land, in question, is of residential in nature, hence Ceiling Act, 1961 will not be applicable.

5. The learned DCLR having considered the submissions of the parties vide its order dated 19.04.2017 allowed the pre-emption application in favour of the pre-emptor-appellant herein. Aggrieved, the writ petitioner preferred Pre-emption Appeal No. 02 of 2017-18. However, the said appeal was dismissed by the learned Collector vide an order dated 13.07.2018 against which the petitioner filed Pre-emption Revision Case No. 136 of 2018 before the learned Divisional Commissioner, Patna.

6. In the meanwhile, in pursuance of the order dated 13.07.2018 passed by the Collector in Pre-emption Appeal No. 02 of 2017-18, the sale deed was executed in favour of the respondent no. 7-appellant through process of the Court on 08.09.2018. While the Pre-emption Revision Case No. 136 of 2018 was pending consideration, the State Legislature enacted The Bihar Land Reforms (Fixation of Ceiling Area and



Acquisition of Surplus Land) (Amendment) Act, 2019, (hereinafter referred to as, "Amendment Act, 2019"). By the Amendment Act, 2019, sub-Section 3 of Section 16 of the Ceiling Act, 1961 which gave the right of pre-emption was repealed and sub-Section 16(4)(i) and (ii) were incorporated, which provided that all cases or proceedings, pending before any of the authorities/tribunal/Court shall be deemed to have abated and the purchase money together with the sum equal to 10 % shall be refunded to the depositor without interest.

7. In light of the amendment, as noted hereinabove, the learned Divisional Commissioner, Patna vide its order dated 17.05.2019/07.06.2019, dropped the revision case as having abated in pursuance of Amendment Act, 2019 and ordered the pre-emptor to receive consideration amount along with 10 % of interest from DCLR, Mohania. The pre-emptor-appellant being aggrieved by the order of the Divisional Commissioner, Patna filed BLT Case No. 547 of 2019 and finally it came to be allowed by an order dated 06.08.2021 on the ground that only proceeding of revision case before the Commissioner stood abated and not the entire case.

8. The learned Tribunal further held that only a part of the order of the Divisional Commissioner was bad whereby he



directed the pre-emptor to receive the purchased money together with 10 % of interest deposited with the DCLR. Since the sale deed has already been executed upon and the mutation has also been done in favour of the pre-emptor vide Mutation Case No. 629 of R27 of 2018-19 and now the pre-emptor is in peaceful possession over the land, in question. Hence, the aforesaid amount shall be deemed to be consideration money through process of the Court in favour of the pre-emptor.

9. The writ petitioner while assailing the order passed by the learned Bihar Land Tribunal in BLT Case No. 547 of 2019 has *inter alia* submitted that since Section 16(3) of the Ceiling Act, 1961 had already been repealed with effect from 25.02.2019 during the pendency of the revision case before the Divisional Commissioner preferred against the order of the DCLR and the Collector filed by the writ petitioner and thus, on account of such repeal of such provision, all pending proceeding stood abated and, as such, the case in between the writ petitioner and the pre-emptor-appellant, pending adjudication also stood abated. Hence, the BLT while adjudicating the case completely missed out the said issue and erroneously held that it does not find any illegality in the first part of the order of the Divisional Commissioner, Patna but second part of the order passed by the



learned Divisional Commissioner, Patna to refund the purchase money of the pre-emptor without any interest is not in accordance with law. It is further submitted that the Divisional Commissioner, Patna while passing the order in revision was conscious of the fact that case in between the parties pending adjudication before him had abated, in view of Section 16(3) of the Ceiling Act, 1961. Hence, in absence of adjudication, the pre-emptor was entitled for refund.

10. The aforementioned contentions led by the writ petitioner was refuted by the respondent no. 7 by filing an affidavit before the learned Single Judge stating specifically therein that the consideration amount along with 10 % deposited by the pre-emptor/respondent no. 7 has already been withdrawn in pursuant to execution of sale deed through Court in his favour and this fact clearly makes the writ petition infructuous.

11. The learned Single Judge hearing the parties found substance in the submissions of the writ petitioner that on what basis, the DCLR permitted the petitioner to withdraw the said amount when the case was pending adjudication before this Court against the order of the BLT and the Commissioner had specifically directed the pre-emptor to receive the deposited consideration amount along with 10 % interest from DCLR,



Mohania. The Court further directed that an illegality has been committed by the DCLR and if any illegality has been committed by an authority, the same cannot be perpetuated by this Court and accordingly, set-aside the order dated 06.08.2021 passed in BLT Case No. 547 of 2019.

12. Mr. Parth Gaurav, learned Advocate for the appellant while assailing the order/judgment of the learned Single Judge has submitted that the learned Court failed to appreciate that sale deed in favour of the pre-emptor/present appellant was already executed on 08.09.2018, much before coming into force of Repeal Act on 25.02.2019, therefore once the sale deed was executed, then the money deposited by the pre-emptor before DCLR at the time of filing of pre-emption application becomes the consideration amount, which has been received by the purchaser i.e. the writ petitioner-respondent no. 1 herein. Despite the aforesaid fact brought to the knowledge of the learned Single Judge, the impugned order came to be passed, erroneously.

13. The writ petitioner-respondent no. 1 herein entered his appearance and filed a supplementary affidavit bringing on record the copy of the order-sheet of Pre-emption Case No. 6 of 2015-16 and also the affidavit duly sworn by the



writ petitioner-respondent no. 1 with a categorical averment that in order to put an end to the long pending litigation between the parties, she has withdrawn the deposited amount (consideration money) kept before the DCLR, in pursuant to the execution of sale deed through Court in favour of the petitioner.

14. We have heard the learned Advocate for the respective parties and perused the order/judgment under challenge. Before proceeding further, it would be pertinent to take note of the amendment brought in the Ceiling Act, 1961. By the Amendment Act, 2019 amendments were carried out in Section 16 of the Ceiling Act, 1961. It would be worth benefiting to quote Section 16(4)(i) and (ii) of the Amendment Act, 2019 which reads as follows:-

“16(4)(i) After the repeal of sub-section (3) of Section 16 of this Act, all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated.

(ii) Pursuant to the repeal of sub-section (3) of Section 16 of this Act, any purchase money together with a sum equal to 10% thereof, already legally deposited shall be refunded, without any interest, to the depositor.”

15. On bare perusal of the aforementioned prescriptions, it



appears that Section 16(3) which initially gave the right of pre-emption, was repealed and Section 16(4) further provided that all cases of proceedings after repeal of Section 16(3) shall be deemed to be abated and the purchase money together with the sum equal to 10 % shall be deposited with the depositor.

16. The constitutional validity of the Amendment Act, 2016 as well as the Amendment Act, 2019 along with the orders passed by different authorities, all of which arise out of applications for pre-emption filed under section 16(3) of the Ceiling Act, 1961 was questioned before the learned Division Bench of this Court in ***Sudhakar Jha Vs. The State of Bihar and Ors.*** and other analogous cases, reported in ***2024 (3) PLJR 409***. The learned Division Bench painstakingly taking note of the relevant prescriptions of the amendment act and the various decisions of the Hon'ble Apex Court which enunciated the grounds on which the law could be invalidated has found no merit in the challenge made in the batch of the cases, raising question of constitutional validity of two amendment acts and further *inter alia* observed as follows:

“49. Both the amendment Acts of 2016 and 2019 having been held to be Constitutionally valid, the question which would arise is as to how would the individual cases, arising out of an application of right to pre-emption under



section 16(3) of the Act and which are pending adjudication at different stages are to be decided. The right of preemption which arose from section 16(3) of the Act having been repealed by the Amendment Act, 2019, it may be stated that clause 2(2) of the Amendment Act, 2019 provides that after repeal of section 16(3) of the Act, all cases or proceedings pending before the State Government, Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court shall be deemed to be abated and pursuant to the repeal any purchase money together with the sum equal to 10% thereof shall be refunded to the depositor, without any interest.”

17. After having careful consideration of the amendment brought through the Amendment Act, 2019 as also the decisions rendered by the learned Division Bench referred hereinabove, it is manifest that in view of the repeal of Section 16(3), what would be deemed to be abated is/are the cases or proceeding pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court. However, such repeal does not affect the proceedings, which have already been concluded.

18. In the case at hand, undisputedly the sale deed was



executed in favour of the respondent no. 7-appellant herein on 08.09.2018 itself, in pursuance of the order dated 13.07.2018 passed by the Collector in Pre-emption Appeal No. 2 of 2017-18 and the consideration amount along with 10 % had already been deposited before the Court of learned DCLR, Mohania.

19. Now what was left to be done by the writ petitioner-respondent no. 1 herein is to receive the consideration amount. Once that consideration amount has already been withdrawn and received by the writ petitioner-respondent no. 1 without any objection, in pursuant to the execution of the sale deed through Court in favour of the pre-emptor and to this effect, an affidavit has been filed before the learned Single Judge as well as this Court also, there is no lis required to be adjudicated.

20. The learned Single Judge though has taken note of the specific fact that the sale deed had already been executed much prior to the coming into force of the Amendment Act, 2019 and further in pursuance of the order of the learned Collector, the writ petitioner has received the consideration amount. There was no reason or occasion to interfere in the order of the Bihar Land Tribunal. We must note herein the settled principle that technicalities or procedural requirement



must not defeat substantive justice, which is the cornerstone of Indian jurisprudence, the law should be a tool for achieving fairness rather than a mechanism for creating insurmountable obstacle.

21. In view of the aforesaid facts, this Court finds merit in the present appeal and accordingly, the order/judgment dated 11.11.2024 passed by the learned Single Judge is hereby set-aside.

22. Since the writ petitioner-respondent no. 1 has withdrawn the consideration amount without any objection, in pursuance of execution of the sale deed through Court in his favour, the dispute between the parties must be given a quietus.

23. Accordingly, the present Letters Patent Appeal stands allowed.

(Harish Kumar, J)

Sangam Kumar Sahoo, CJ : I agree

(Sangam Kumar Sahoo, CJ)

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AFR/NAFR	NAFR
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