

PETITIONER:
SHEOJI MMAHTO & ORS.

Vs.

RESPONDENT:
THE ADDITIONAL MEMBER, BOARD OF REVENUE & ORS.

DATE OF JUDGMENT: 10/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the order of the Patna High Court, made on December 10, 1984 in CWJC No. 5491/84 dismissing the writ petition in limine.

The admitted facts are that Sukhdeo Raj is the predecessor in interest of respondents. Gulabo Devi and others had purchased one katha of land towards the east land of the appellants from Sukhdeo Rai by a sale deed executed on December 31, 1979 which was got registered on for February 8, 1980. The appellants had filed an application for preemption of the land on the ground that he, being the adjoining raiyat, by operation of Section 16 (3) of the Bihar Lands Ceiling Act was entitled to preemption of the said land from the contesting respondent. The Tribunal help in favour of the appellant respondent. The Collector in the proceedings dated August 11, 1984 held against the appellants. The High Court has dismissed the writ petition in limine as stated earlier. The question, therefore is: Whether the view of the collector is correct in law? Section 16(3)(1) Reads as under

"16(3)(1) 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 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 of the Raiyat shall be entitled to be put in possession of the land irrespective under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the Raiyat as the case may be shall be enacted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal ten per cent of the purchase money out of the deposit made under clause (i)."

A reading of section 16(3)(i) Clearly indicates that when any transfer of land is made after the commencement of the act, to any person other than a co-sharer or a Raiyat of adjoining and any co-sharer of the land transferred 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 of the collector in the prescribed manner for the transfer in the said deed. It is not in dispute that Tribunal below help the land sold to the respondents by registered sale deed. An application was also filed within three months from the date of the registration of the document. Under these circumstances the two conditions having been satisfied by operation of section 16 (3) (i), the appellants are entitled to preemption of the said land. The High Court therefore, was clearly in error in refusing to entertain the writ petition dismissed in limine. The collector was also wrong in allowing the appeal.

The appeal is accordingly. The order of the High Court as also of the collector are set aside. No costs.