

development whereby the right of pre-emption itself has been taken away by the Bihar Act No. 6 of 2019 when the Act was amended. The Amending Act reads thus:

“The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019

1. Short title, Extent and Commencement. – (1) This Act may be called The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019.

(2) It shall extend to the whole of the State of Bihar. (3) It shall come into force immediately.

2. Amendment in Section 16 of the Act, 1961. – (1) Sub Section (3) of Section-16 of the said Act is hereby repealed.

(2) In the Section-16 of the said Act, the following new sub section-(4) shall be added:-

“(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.” 1 For short, the ‘Act’

5. Mr. Rakesh Kumar Khanna, learned senior counsel for the appellants argued that in terms of sub-section 4(i) inserted vide the amending 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. Thus, it is contended that the object of amending the Act was to abate all proceedings for pre-

emption of the land which was pending before any forum. The expression “any other Court” will include the Constitutional Courts i.e. the High Court or the Supreme Court. Thus, if the basic right of pre-emption stands obliterated, the proceedings in appeal before this Court stands abated.

6. On the other hand, Mr. Upadhyay, learned senior counsel for the respondents argued that in terms of Section 1(3) of the Amending Act, the Act will come into force immediately i.e. on 25.2.2019. Therefore, the Amending Act will have to be read prospectively. Thus, the right of pre-emption will not be available only after the Amending Act came into force. Therefore, the Amending Act will not take away the right of pre-emption conferred upon the respondents. He relied upon the

judgment of this Court reported as *Shyam Sunder & Ors. v. Ram Kumar & Anr.*² wherein the right of a co-sharer to pre-empt a sale has been taken away during the pendency of the appeal by Haryana Amendment Act of 1995. Such amendment was held to be prospective. The learned counsel for the respondents also relied upon a judgment of this Court in *District Collector, Vellore District v. K. Govindaraj*³ contending that if the amendment is affecting the substantive rights, it cannot be said to be 2 (2001) 8 SCC 24 3 (2016) 4 SCC 763 retrospective.

7. We have heard the learned counsel for the parties and find that the right of pre-emption, after the Amending Act, abates as sub-section 4(i) is specifically dealing with all pending proceedings before whatsoever forum. Therefore, the right of pre-emption will stand abated on and after 25.2.2019 including the proceedings which were pending before any forum.

8. This Court in *Shyam Sunder* was examining the question as to the right of pre-emption given to the co-sharer was taken away or not by the Haryana Amendment Act as substituted by Haryana Act No. 10 of 1995. The substituted Section 15 reads thus:

“15. Right of pre-emption to vest in tenant. – The right of pre-emption in respect of sale of agricultural land and village immovable property shall vest in the tenant who holds under tenancy of the vendor or vendors the land or property sold or a part thereof.”

9. This Court held that the legal principles that emerge in respect of the right of pre-emption are as under:

“1. The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance only.

2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.

3. A pre-emptor who has a right to pre-empt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first court would not affect his right or maintainability of the suit for pre-emption.

4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for pre-emption by the court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation.”

10. In view of the aforesaid circumstances, since the Haryana Amendment Act has not taken away the right of pre-emption with retrospective effect, it was held that the amendment is prospective. This Court held as under:

“17. In modern times, the right of pre-emption based on statutes is very much a maligned law. During hearing of these appeals, such rights have been characterised as feudal, archaic and outmoded and so on. But its origin which was based on custom and subsequently codified was out of necessity of the then village community and society for its preservation, integrity and maintenance of peace and security. In changed circumstances, the right of pre-emption may be called outmoded, but so long it is statutorily recognised... xxx xxx xxx

37. We are in respectful agreement with the view taken in *Moti Ram v. Suraj Bhan* [AIR 1960 SC 655 : (1960) 2 SCR 896] . The right of pre-emption may be a weak right but nonetheless the right is recognised by law and can be allowed to be defeated within the parameters of law. A statute which affects the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment... xxx xxx xxx

47. The result of the aforesaid discussion is that the amending Act being prospective in operation does not affect the rights of the parties to the litigation on the date of adjudication of the pre-

emption suit and the appellate court is not required to take into account or give effect to the substituted Section 15 introduced by the amending Act.”

11. The judgment in *K. Govindaraj* was considering the amendment to Rule 8(8) of the Tamil Nadu Minor Mineral Concession Rules, 1959 as to whether such amendment will have a retrospective effect or not. Such an amendment in the Rules was not retrospective but the period of lease for quarrying stones in respect of virgin areas which have not been subjected to quarrying shall be ten years. Since the Rules were not specifically said to be retrospective, it was only in respect of virgin areas that the period of lease stands enhanced to ten years whereas in respect of the other areas the period of lease continues to be of five years. This was a substantive amendment. This Court held that there was no concept of “virgin areas” in the unamended Rule which has been introduced for the first time by way of aforesaid amendment, therefore, the Rule cannot be said to be procedural.

12. In *Shyam Sunder*, the right of pre-emption was said to be maligned law.

Such rights have been characterized as feudal, archaic and outmoded. Such right of pre-emption has been taken away and all proceedings pending before any authority have been ordered to be abated including proceedings in any other Court. Any other Court is wide enough to include the Constitutional Courts i.e. the High Court and the Supreme Court. Even the 10% of the pre-emption amount which is required to be deposited was ordered to be deposited. Thus, keeping in view the object of the Statute, purpose to be achieved and the express language of the Amending Act, all

proceedings of pre-emption under the Act pending before any authority under the Act or before any Court shall stand abated.

13. Consequently, the present appeals are allowed. The entire pre-emption proceedings stand abated. It shall be open to the respondents to withdraw 10% of the amount deposited by them in terms of Section 16 of the Act in accordance with law.

.....J. (HEMANT GUPTA)J. (S. RAVINDRA BHAT) NEW DELHI;

JANUARY 03, 2022.

ITEM NO.31

Court 11 (Video Conferencing)

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 15694-15701/2017 (Arising out of impugned final judgment and order dated 11-04- 2016in LPA No. 871/2004 11-04-2016 in LPA No. 902/2004 11-04-2016 inLPA No. 912/2004 11-04-2016 in LPA No. 913/2004 20-03-2017 in CRNo. 258/2016 20-03-2017 in CR No. 260/2016 20-03-2017 in CR No.261/2016 20-03-2017 in CR No. 262/2016 passed by the High Court OfJudicature At Patna) PUNYADEO SHARMA AND ORS ETC Appellant(s) VERSUS KAMLA DEVI AND ORS. ETC. Respondent(s) Date : 03-01-2022 These matters were called on for hearing today.

[The reasoned order is uploaded on 04.01.2022] CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA HON'BLE MR. JUSTICE S. RAVINDRA BHAT For Appellant(s) Mr. Rakesh Khanna, Sr. Adv.

Mr. Pavan Kumar, AOR Ms. Neelam, Adv.

For Respondent(s) Mr. S. B. Upadhyay, Sr. Adv.

Mr. Ravi Chandra Prakash, Adv.

Mr. Purushottam Sharma Tripathi, AOR Mr. Mukesh Kumar Singh, Adv.

Mr. Rajiv Kumar, Adv.

Mr. Nishant, Adv.

Mr. Abhinav Mukerji, AOR Ms. Bihu Sharma, Adv.

Ms. Pratishtha Vij, Adv.

Mr. Akshay C. Shrivastava, Adv.

UPON hearing the counsel the Court made the following O R D E R The reasoned order is placed on the file and is uploaded on 04.01.2022.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)

ITEM NO.31

Court 11 (Video Conferencing)

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 15694-15701/2017 (Arising out of impugned final judgment and order dated 11-04- 2016 in LPA No. 871/2004 11-04-2016 in LPA No. 902/2004 11-04-2016 in LPA No. 912/2004 11-04-2016 in LPA No. 913/2004 20-03-2017 in CR No. 258/2016 20-03-2017 in CR No. 260/2016 20-03-2017 in CR No. 261/2016 20-03-2017 in CR No. 262/2016 passed by the High Court Of Judicature At Patna) PUNYADEO SHARMA AND ORS ETC Appellant(s) VERSUS KAMLA DEVI AND ORS. ETC. Respondent(s) Date : 03-01-2022 These matters were called on for hearing today. CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA HON'BLE MR. JUSTICE S. RAVINDRA BHAT For Appellant(s) Mr. Rakesh Khanna, Sr. Adv.

Mr. Pavan Kumar, AOR Ms. Neelam, Adv.

For Respondent(s) Mr. S. B. Upadhyay, Sr. Adv.

Mr. Ravi Chandra Prakash, Adv.

Mr. Purushottam Sharma Tripathi, AOR Mr. Mukesh Kumar Singh, Adv.

Mr. Rajiv Kumar, Adv.

Mr. Nishant, Adv.

Mr. Abhinav Mukerji, AOR Ms. Bihu Sharma, Adv.

Ms. Pratishtha Vij, Adv.

Mr. Akshay C. Shrivastava, Adv.

UPON hearing the counsel the Court made the following O R D E R Heard the learned counsel for the parties at length. Leave granted.

The appeals are allowed.

Reasons to follow.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER