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SHEOJI MAHTO AND ORS.

v.

THE ADDITIONAL MEMBER, BOARD OF
REVENUE AND ORS.

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DECEMBER 10, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961: Section 16(3).

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Pre-emption—Application filed by appellants for pre-emption of land sold to respondents by sale deed—Application filed within three months from the date of registration of the document—Tribunal holding in favour of appellants on the ground that appellants—Raiyats were holding land adjoining the land sold to respondents—Collector holding against the appellants—High Court dismissing appellants' writ in limine—Appeal—Held conditions under section 16(3)(i) were satisfied—Therefore appellants were entitled to pre-emption.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 465 of

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1986

From the Judgment and Order dated 10.12.84 of the Patna High Court in C.W.J.C. No. 5491 of 1984

M. Pankaj Bala Varma for D.B. Vohra for the Appellants.

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The following Order of the Court was delivered :

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*.

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The admitted facts are that Sukhdeo Rai is the predecessor-in-interest of the respondents. Gulabo Devi and others had purchased one Katha of land towards the east of the land of the appellants from Sukhdeo Rai by a sale deed executed on December 31, 1979 which was got registered on February 8, 1980. The appellants had filed an application for

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pre-emption 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 pre-emption of the said land from the contesting respondent. The Tribunal held in favour of the appellant and ultimately 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)(i) 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 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 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 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 raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to 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 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 transfer of the land to him on the terms and conditions contained in the said deed. It is not in dispute that Tribunal below held the appellants to be raiyats holding land adjoining to the land sold to the

- A 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 pre-emption 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.
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The appeal is accordingly allowed. The order of the High Court as also of the Collector are set aside. No costs.

T.N.A

Appeal allowed.