

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 103/2016
Maina Devi & ors.
Vrs.
Nagendra Rai & ors.
ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal No. 05/2015 on 31.03.2016.

The brief facts of the case are that the disputed piece of land measuring 3 katha 11 dhur, appertaining to khata No. 93, Survey plot No. 482 situated in Mouza Sonia, P.S.-Janta Bazar, Dist-Saran was transferred to present respondent No. 1 & 2, Nagendra Rai and Sri Mati Radha Dei by respondent No.3, upendra Ram through registered sale deed executed on 06.08.2014. Thereafter, the present petitioners claiming themselves to be adjoining raiyat of the vended land and the land being of agricultural nature, filed a pre-emption case bearing. Land Ceiling case No. 08/2014-15 before DCLR, Chapra Sadar for reconveyance of the said land as per provisions contained in section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of surplus Land) Act-1961. Thereafter, the learned DCLR, after hearing the case finally vide order dt. 12.01.2015 disallowed the pre-emption claim of the petitioner holding that the petitioner was no way qualified to be considered as adjacent raiyat of the disputed land. Feeling aggrieved by the said order, the present petitioners filed an appeal case before learned Addl. Collector, Saran and the said appeal was dismissed vide order dt. 31.03.2016 on the ground that the petitioner can not be held as adjoining raiyat of the disputed land for the reason that the name of the petitioner are not mentioned in any of the boundary of the vended land. This led to filing of instant revision petition before this Court.

Heard the learned counsel for the petitioners only as the learned counsel for the respondents remained absent despite being given last chance on earlier date.

The learned counsel appearing on behalf of the petitioner at the very beginning of the arguments submitted that the impugned order is arbitrary and unsustainable in law as the relevant facts of the case have not been taken into consideration while passing the order. He further submitted that the petitioners are the boundary raiyat of the disputed land and the land is being of agricultural nature, the pre-emption claim of the petitioners ought to have been allowed by the learned Courts below. He also argued that the vendor knowingly left out a small stretch of land measuring 1 ½ dhur each in north and west side of the disputed land in order to defeat the pre-emption claim. The learned counsel further argued that the purpose of section 16(3) is to prevent fragmentation of land so as to facilitate the smooth agricultural activities but the small area left not by the vendor never be used for agricultural purpose. He further argued that the total area of plot No. 482 is 1 bigha 10 katha 3 dhur of which the descendants of the khatiyani raiyat transferred their respective share to different persons on different period. He lastly said that as the respondent No.3 simply with a motive to defeat the pre-emption claim left same area of land in his own name, but the same can not be taken into consideration to ignore the claim of petitioner who also hold land in plot No. 487. He again said that as the learned Courts below failed to do justice in the case, the said orders are fit to be set aside.

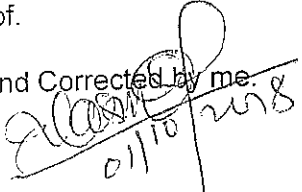
Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the petitioner and on perusal of the

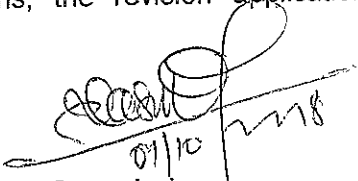
impugned order, it is seen that in the instant case the area of disputed land is 3 katha 11 dhur of a big plot having total area 1 bigha 10 katha 3 dhur. The petitioner's claim is that as the vendor given his own name as "Niz" in the northern and western boundary by keeping 1 ½ dhur land on each side just to defeat the pre-emption claim of the petitioner her claim of pre-emption is valid as she is the adjoining raiyat. This plea of the petitioner's counsel seems to be true in view of the fact that by leaving 1 ½ dhur land each in northern and western boundary of the vended land can no way be helpful for the vendor to use the said land for agricultural purpose and the said move of the vendor indicates his malafide intention also. It is also important to be noted that by leaving merely 1 ½ dhur of land in northern and western boundary of the vended land by the vendor would no way serve any purpose for agricultural activity and even the said stretch of land can not be used for any other purpose. In fact, it can be safely assumed that the said land has been left out deliberately by the vendor to defeat the rightful claim of the pre-emptor to prove that she is the adjoining raiyat. The learned Addl. Collector, has failed to consider this important point eloquently when the same was raised before him. In fact, the learned Addl. Collector ought to have considered this point appropriately keeping in view the steps taken by the vendor to defeat the rightful claim of the petitioner.

For the aforementioned reasons, I am not constrained to uphold the impugned order of learned Addl. Collector, Saran. Hence, the same is set aside and the case is remitted back for reconsideration, on the point mentioned above, and to pass a fresh order in accordance with law.

With the aforesaid observations and directions, the revision application is disposed of.

Dictated and Corrected by me.


01/10/2018
Commissioner
Saran Division, Chapra.


01/10/2018
Commissioner
Saran Division, Chapra.