

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 172/2013
Abdul Manan
Vrs.
Amirul Haque & ors.
ORDER

The instant revision application is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 15/2011 on 07.06.2016.

The brief facts of the case are that the disputed piece of land measuring 7 katha 5 dhur, appertaining to khata No. 217, Khesera No. 1665 situated in Mouza Vrindaban, P.S.-Uchakageon, Dist-Gopalganj was transferred through registered sale deed dt. 15.06.2011 executed by two brothers Vijay Kumar verma and Shailendra Kumar Verma S/o Suresh Chandra Prasad of the said village in favour of present respondent No.1. Thereafter, the original petitioner Shikh Dil Mohammad S/o Raj Hussain, claiming himself to be the adjoining raiyat of the transferred land filed a pre-emption petition vide case No. 08/2011-12 before DCLR, Hathua. Thereafter, the learned DCLR, after hearing the case finally vide order dt. 01.12.2011 allowed the pre-emption claim in favour of the petitioner holding that the claim of pre-emptor with respect to adjoining raiyat as a acceptable claim. Feeling aggrieved by the said order, the present respondent No.1 filed an appeal case before Collector, Gopalganj vide Land Ceiling 16(3) Appeal case No. 16/2011. The learned Collector, after hearing the parties finally vide order dt. 01.06.2013 reversed the said findings of the learned DCLR holding that the said land has been transformed into a homestead land and accordingly the said appeal was dismissed. On being aggrieved by and dissatisfied with the aforesaid order passed by learned Collector, Gopalganj, the petitioner preferred the instant revision case before this Court.

Meanwhile, during pendency of this case before this Court, the sole petitioner Shikh Dil Mohammad died and thereafter, his son Abdul Manan has been substituted as petitioner in the present revision case.

The learned counsel appearing on behalf of the petitioner, at the very outset of his argument, submitted that the impugned order of Collector, Gopalganj has been passed without appreciating the facts that the petitioner's claim of adjoining raiyat of the disputed plot is a strong claim and under such circumstances his claim of pre-emption should not have been ignored. He further argued that the learned Collector, neither considered the evidence forwarded by the petitioner with regard to his claim of adjoining raiyat nor considered the statutory provision of 16(3) of the land Ceiling act. It is further submitted by the petitioner with the help of sketch map; drawn at the foot of memo of revision petition that the petitioner hold plot No. 1677 towards west and 1666 towards east of the disputed plot No. 1665 and he further pleaded that on that basis the petitioner's claim of pre-emption is well established and on that basis the learned DCLR has allowed his pre-emption claim. He also submitted that plot No. 1677 was purchased by his father and uncle in their joint name in the year 1961 and plot No. 1666, which is in east of the disputed plot was purchased by the present petitioner in the name of his daughter in law who subsequently transferred the same to her minor son through gift deed. It is further submitted that the claim of respondent No.1 as adjoining raiyat on the basis of plot No. 1702, which is west to the disputed plot is his ancestral property recorded in the name of Sk. Nazeer in record of right and its total area is 1 bigha 14 katha 13 dhur in which different person having different share contentions of the contesting parties before learned DCLR, the

learned DCLR himself visited the spot to inquire into facts regarding the rival claim of the parties and he found that plot No. 1666 and 1677 are the adjoining plots to the disputed and are in possession of the petitioner. Regarding the claim put forth by respondent No.1 with respect to nature of land that the same is of homestead nature, the learned counsel said that the learned Collector has wrongly mentioned in his order that the house of petitioner is in the boundary of disputed plot. But in fact the house of the petitioner was situated in west of the plot No. 1677. He also argued that the learned Collector has wrongly held that the disputed land has been developed into residential area but the fact is the disputed land is recorded in sale deed document as agricultural land. The learned counsel further placed reliance on judgements of Hon'ble apex Court wherein it has been held that the pre-emption right in a statutory right and so the same should not be discarded on flimsy ground. He lastly said that as the impugned order suffers from the vice of arbitrariness, the same is fit to be set aside and this revision petition deserves to be allowed.

The learned counsel appearing on behalf of respondent No.1 while opposing the arguments forwarded by the learned counsel for the petitioner, submitted that the impugned order of Collector, Gopalganj is speaking one, just legally and correct as the same has been passed after consideration of facts and circumstances involved in the case. He further argued that the very claim of petitioner regarding local inspection seems to be doubtful as no material or enquiry report is available on record. He also resisting the claim of adjoining raiyat of the petitioner, submitted that the respondent No.1 himself held land in the western boundary of disputed plot No. 1665 and he also referred to a judgement passed by Hon'ble High Court wherein it has been held that even a corner of land in possession of vendee it touches the purchased land, no claim of pre-emption be made as in that case the purchaser himself become boundary raiyat. He also argued that the petitioner's alleged claim that he held land adjacent west to disputed plot No. 1665 by virtue of plot No. 1677 is wrong and false claim as the petitioner had his house existing in the south west corner of plot No. 1677 as shown in sketch map and as such petitioner can not be held as boundary raiyat of plot No. 1665. The learned counsel also argued that that the petitioner has given wrong genealogical table of family of recorded tenant of R.S. plot No. 1702 and stated to be adjacent west to the disputed plot with a view to mislead this Court. He further argued that the learned Collector has rightly been rejected the adjacency claim of the petitioner and it has also been rightly held that when the nature of land changes from kasht land to Dih-basgit land, no claim of pre-emption is enforceable. He lastly prayed that as the impugned order is just, proper and valid having no illegality, the same is sustainable and accordingly this revision petition is fit to be dismissed.

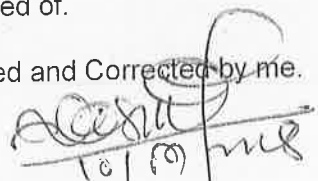
Considering the facts and circumstances of the case, material available on records, claims and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it clearly manifests that in the instant case both parties claim themselves to be adjoining raiyat of the transferred land. The petitioner's claim is solely based on the ground that he held plot No. 1666 and 1677 towards east and west respectively and these two plots are adjacent to disputed land bearing plot No. 1665. The other important claim of the petitioner is that the said disputed land has been shown to be agricultural in nature and it was on these two grounds, the learned DCLR after satisfying himself during local inspection allowed the pre-emption claim in his favour. On the other hand, the learned counsel for the respondent No.1 also raised valid claim of he bearing also an adjoining raiyat by virtue of plot No. 1702, held by him, whose corner touches the disputed plot No. 1665. His other claim is that the said land has changed its nature from agricultural to dih-basgit as such the claim of pre-emption made by the petitioner is totally unfounded and the learned Collector has rightly been disallowed the pre-emption claim of the petitioner. I find that in the instant case the preliminary dispute relates to adjudication of the claim of the parties with regard to their respective claim as to

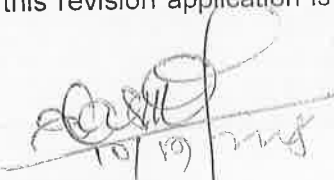
whether they are the adjoining raiyat of the disputed land or not. Similarly, the other issue, a bit less significant vis-a-vis. He claim of adjoining raiyat important is to decide as to whether the said disputed land can be held as agricultural or dih-basgit land. Both parties have tried their best on the basis of genealogical table, sketch map and in the light of Hon'ble High Courts judgment to prove their claim to be a legally valid claim. However, it is seen that the learned DCLR held the pre-emption claim of the petitioner as a justified claim and he accordingly allowed the case as as original authority and his findings with respect to status of adjoining raiyat stated to have been based on his local inspection. But the learned Collector in appeal has reversed the said findings of learned DCLR and also expressed doubt on the very question of local inspection in absence of availability of any inquiry report on record. It is seen that both the learned Courts below have recorded different and contradictory findings on one or another basis so far as the claim regarding adjoining raiyat by the parties is concerned. Obviously, although, pre-emption right has been held as weak right, nevertheless, it is a statutory right and the same can not be denied on irrelevant grounds. In fact, it appears that the learned Collector, while differing with the findings of the learned DCLR, ought to have recorded valid and convincing reasons, but it appears that he simply disposed of the case without taking any steps at his end to ascertain the claim of the parties on the basis of evidences regarding claim of adjoining raiyat of the disputed land available on records. The petitioner claim that he is the boundary raiyat by virtue of two plots adjacent to the disputed plot should not have been ignored outrightly without making any inquiry into the claim of the parties. It appears that the learned Collector has failed to ascertain the real facts regarding adjoining raiyat status of the petitioner which is of utmost important in the facts and circumstances of the case and the same can only be done by making local inquiry. It is also important to mention here that the learned Collector did not consider the findings recorded by learned DCLR about the adjoining raiyat status of the petitioner after making local inspection and doubts have been expressed by him over that. In such a situation it becomes necessary that fresh inspection be made for ascertain the adjoining status of the parties.

Thus, for the aforementioned reasons, the impugned order of learned Collector, Gopalganj is not sustainable and hence the same is set aside and the case is remitted back to Collector, Gopalganj with a direction for reconsideration and passing a fresh and reasoned order after making a local inquiry with regard to the adjoining status claim of the parties to the vended land and to dispose of the case in accordance with law after giving opportunity of hearing to the parties.

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

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.