

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling Rev. No. 73/2014
Shiv Dutt Ram & ors.
Vrs.
Azad Chaudhary & ors.
ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal case No. 33/2012 on 30.01.2014.

The brief facts of the case are that the present respondent No.1 Azad Chaudhary and respondent No.2 Futuni Chaudhary, both resident of vill-Dhanaura, P.S.-Awtar Nagar, Dist-Saran, purchased 5 katha land appertaining to khata No. 119, survey plot No. 420 situate in Mouza Dhanaura from Nand Kishore Prasad, Kashi Nath Bayahut and Most. Kunti Kuwar through registered sale deed on 29.08.2011 after paying the consideration money. Thereafter, the present petitioner, Shivdutt Ram and Arun Dutt Ram, of the same village claiming themselves as adjoining raiyat of the vended land, filed pre-emption case vide Land Ceiling case No. 15/2011-12 before DCLR, Chapra Sadar under the provision of section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961. The learned DCLR after hearing the case finally vide order dt. 29.09.2012 allowed the said case in favour of pre-emptors holding them to be landless and adjoining raiyat and their claim to be stronger than the purchaser. Feeling aggrieved by the said order, the present respondents preferred an appeal case before Addl. Collector, Saran vide Land Ceiling (pre-emption) Appeal No. 33/2012. The learned Addl. Collector, Saran after hearing the parties finally vide order dt. 30.01.14 reversed the findings of the learned DCLR and accordingly he allowed the said appeal case in favour of the present respondent.


On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran dt. 30.01.2014, the present petitioners have preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order, submitted that the learned Addl. Collector, Saran without any cogent reasons dismissed his appeal hence the said order is fit to be set aside. The learned counsel further submitted that the petitioner being an adjoining raiyat of the vended land, his pre-emption case was allowed by the learned DCLR, Chapra Sadar as he fulfilled the primary condition required for claiming pre-emption u/s 16(3) of the Land Ceiling Act. He further argued that the petitioner is the adjacent raiyat of the vended land and this fact can not be disputed rather it is an admitted fact by the parties as well as by the learned Courts below but in appeal his claim of pre-emption has been dismissed on the ground that the respondents are landless person against whom no pre-emption case is maintainable. He also asserted that the Addl. Collector has based his order on the report of C.O. Garkha but the fact is that the respondent had land at Mouza Kothiya and Dhanaura besides o.p. Fatuni Chaudhary has got big business and landed property in Assam and he did not prefer appeal hence the order of the learned Addl. Collector, Saran is fit to be set aside. The learned counsel further submitted that the respondents are not boundary raiyat of the vended land and the o.ps have no passage for ingress and egress over the disputed plot so the story of construction of residential house is totally unbelievable and even in the sale deed the nature of land has been mentioned as irrigated and agriculture. It has been further argued by

the petitioner's counsel that the respondent can not be considered as a landless person because they have double storied pucca building in the village and the certificate produced by the o.ps are forged and fabricated and no reliance can be placed on that. The learned counsel lastly said that the learned Addl. Collector has wrongly made application the rulings cited before him in his order but the fact is that the said rulings are no way helping the o.ps to prove their claim of landless person. He also prayed that as the impugned order is arbitrary, erroneous, illegal and beyond the material facts of the case, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondents on the other hand strongly opposed the argument forwarded by the learned counsel for the petitioner and submitted that the impugned order is just, reasoned and in accordance with law. He further argued that the order of the learned lower Court of the Addl. Collector is legal and valid according to the provision of law and no part of the order of the learned lower Court is illegal or against the mandatory provisions of law. He further submitted that the petitioners have filed the aforesaid land ceiling revision before this learned Court with false and concocted allegations against the real state of affairs. That the o.p. No. 1 and his brother o.p. No.2 had purchased 5 kathas area of plot No. 420 appertaining to khata No. 19 through registered deed of sale dt. 29.08.2011 for Rs. 3 Lakh situated at village-Dhanaura, P.S.-Garkha, Dist-Saran for residential purpose from the land owner. He also argued that in Ceiling case No. 15/2011-12 the respondents raised their claim of being landless persons and hence the provision of pre-emption under section 16(3) ceiling Act is not at all applicable. In support of the legal contention the o.p. No.1 and 2 cited the decision reported in PLJR-2005(2) page 24, filed the photo state copy thereof before the learned lower Court. Besides that the o.p. No. 1 and o.p. No. 2 had also cited the decision reported in PLJR. 1997 (2) page 287; filed the photo state copy thereof before the learned lower Court wherein it has been specifically mentioned that "if a landless person is not allowed protection then he can not acquire any land since he is neither a co-sharer nor a raiyat such a position could be very unjust and total for a landless person claiming right of pre-emption although, created, by statute is a clog on the right of a person to acquire land. That besides that the o.p. No.1 and 2 on the point of definition of landless person also cited the decision reported in PLJR 2005(2) page 24, filed the photo state copy thereof before the learned lower Court wherein it has been specifically mentioned that definition of landless person that "person having landless than one acre will come within the definition of the landless person". In support of being landless the o.p. No. 1 and 2 filed certificate to that effect which was duly issued by the local circle officer. The learned counsel further submitted that the Additional Collector, Chapra considering the illegality and infirmities of order of DCLR, Sadar Chapra allowed the land ceiling appeal No. 33/12 filed on behalf of the o.p. No. 1 of this ceiling revision by setting aside the order of the DCLR, Chapra Sadar against which this ceiling revision has been filed by the petitioners shivdutt Ram and others. He also submitted that similar grounds and points were raised by the applicant before the learned Addl. Collector in the Land Ceiling Appeal No. 33/2012 and when those grounds were found baseless without any legal stand that appeal was dismissed and thereafter again the similar objection had been raised in the present ceiling revision also. From the grounds and objections raised by the applicants in the present ceiling revision it will be apparent that the decisions of the Hon'ble High Court have been tried to be ignored by the applicants. That the petitioners of this ceiling revision have also tried to challenge the report of C.O. Garkha but to controvert the report of C.O. not a chit of paper has been filed on behalf of the petitioners shivdutt Ram and Arun Dutt Ram at any stage of this case right from the Court of DCLR Chapra to Addl. Collector. That ignoring the decision of the Hon'ble Court as well as the report of C.O. regarding the landless status of the o.p. the objections raised by the petitioners in this present ceiling revision has got no leg to stand. it is therefore prayed that your honour may be pleased enough to dismiss the present ceiling revision filed by the petitioners for the sake of justice.



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 is seen that in the instant case the important question remains to be decided as to whether the claim of pre-emption raised by the petitioners on the basis of they being the adjoining raiyat of the vended land is legally valid or not in the event of the respondents purchasers succeeded in proving that they are the landless person. It is seen that the learned DCLR had although admitted the fact that the purchasers are the landless person despite that he allowed the pre-emption claim holding that the pre-emptors have better ground for pre-emption on the basis that they being the adjoining raiyat of the vended land. However, the learned Addl. Collector in view of the various rulings cited before him by the present respondents as appellants came to the conclusion that against landless person no pre-emption claim is maintainable. Obviously the claim of landless status of the present respondents is the central issue of this case needs to be decided in all fairness and beyond all reasonable doubt so as to arrive at a correct findings of facts regarding the landless claim. It is seen that the learned Addl. Collector has placed heavy reliance on the certificate issued in favour of the present respondent with respect to landless status rather taking any other steps to test the genuineness of the said certificate. In fact this claim of the respondent requires to be verified in view of the contradictory claim of the petitioner that the respondent by no means qualified to be considered as a landless person. I find that this important point needs to be examine thoroughly through every possible way to arrive at the at a correct findings of facts.

For aforementioned reasons, the impugned order of Addl. Collector, Saran is set aside and the case is remitted back to Addl. Collector, Saran to verify the landless status of the respondent as existing on the date of purchase of the disputed land.

With the aforesaid observations and directions this revision petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.