

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 215/2015

Shakuntla Devi

Vrs.

Alakhdeo Prasad Yadav & ors.

ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran, Chapra on 31.07.2015 in Land Ceiling (pre-emption) Appeal No. 12/2013.

The brief facts of the case are that the disputed piece of land measuring 4 katha 11 dhur, appertaining to khata No. 87, Survey plot No. 396 situated in Mouza Hariharpur was purchased by the present petitioner Shakuntala Devi, W/o Jagarnath Sah R/o Kanor Hariharpur, P.S.-Khaira, Dist-Saran through registered sale deed on 02.05.2012. Thereafter, the present respondent Alkhdeo Pd. Yadav S/o Late Ram Das Prasad Yadav, resident of the said village, claiming himself to be the adjoining raiyat of the vended land and the land being of agricultural in nature, filed a case bearing No. Land Ceiling case No. 14/2012-13 before DCLR, Chapra Sadar under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961 for enforcement of his pre-emption right. Thereafter, the learned DCLR after hearing the case finally vide order dt. 11.04.2013 rejected the claim of pre-emption on the ground that the said disputed land became residential in nature and on which provision of section 16(3) is not applicable. Feeling aggrieved by the said order, the present respondent preferred an appeal before Addl. Collector, Saran vide Land Ceiling (pre-emption) Appeal No. 12/2013. The learned Addl. Collector after hearing the case finally vide order dt. 31.07.2015 reversed the findings of learned DCLR and in turn allowed the said appeal case holding that the said disputed land is of agricultural nature as per recital of the sale deed and the pre-emptor also being the adjoining raiyat.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran the present petitioner has preferred the instant revision before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner, at the very outset of his argument, submitted that the impugned order is bad in law as the said order has been passed without appreciating the real question of law and facts. He further argued that the learned lower Court wrongly held that the said disputed land is agricultural in nature till now and has not considered the real facts that the said area has already been developed as residential area. He further argued that the learned lower Court has not appreciated the report of pleader Commissioner who has reported that in the eastern boundary of the disputed land the house of Smt. Devanti Devi is standing rather he placed reliance only on the eastern boundary given in sale deed document. He also argued that the petitioner after putting a Palani over the said land is in the practice of using the vacant area of the land as kitchen garden, as reported by the pleader Commissioner in his report but the said report was overlooked. The learned counsel lastly said that as the said land has been changed into residential land, the pre-emption claim of the respondent should not have been allowed and as the learned Addl. Collector did not consider this point, the said order is legally not sustainable.

The learned counsel appearing on behalf of the respondent, strongly opposed the arguments forwarded by the learned counsel for the petitioner and submitted that as the



respondent is the adjacent raiyat of the vended land his claim of pre-emption has been rightly allowed by the learned Addl. Collector. He further submitted that even in the report of pleader Commissioner it has been mentioned that the disputed land is in the form of a ditch and it is just about three feet below from the road and such land can not be used for residential purpose and so far the existence of some houses in the vicinity is concerned the same are in another village Kanor. Regarding the claim of the petitioner that she is a landless lady, he argued that the said claim is not justifiable anyway as she has failed to file any certificate regarding such claim in the Court below. The learned counsel further submitted that even in the sale deed document, the nature of land has been mentioned as agricultural. The learned counsel lastly said that as the impugned order has been passed after careful consideration of the relevant facts of the case appropriately and there is no legal infirmity in the said order as such the same is fit to be upheld and this revision petition being devoid of any merit 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 is seen that in the instant case two important points need consideration. Firstly as to whether the said land be considered as agricultural or residential in nature and secondly whether, the petitioner qualifies to be considered as a landless person or not. So far as the first issue regarding the nature of disputed land is concerned, it is found that the said land has been mentioned as agricultural in recital of the sale deed. It is almost settled position that description of land given in the sale deed document is a strong evidence to determine the nature of land but the same is not conclusive piece of evidence beyond all reasonable doubts. However, the petitioner's claim that the said land has been changed into homestead land can be held to be true to some extent in view of the fact that the said land has been found as vacant along road side by the pleader Commissioner during the spot inspection. The second point that the petitioner is a landless person also seems to be true as the petitioner has no other land in her name and the even the respondent failed to disprove the said claim. Thus, it appears that these two points need to be considered thoroughly beyond all reasonable doubts to arrive at a correct findings of fact. On the other hand, the respondent's claim of he being the adjoining raiyat of the vended land is solely based on the ground that his name has been mentioned in the eastern boundary of the sale deed document. Similarly, his other claim that the said land is of agricultural nature is also proved from the recital of the sale deed document. However, the dispute with regard to nature of land as existing on the date of transfer of the disputed land and the landless status claim of the petitioner need to be determined beyond all reasonable doubts to arrive at a correct findings of facts. It is seen that the learned Addl. Collector, without considering these facts appropriately by appreciating the relevant facts required for arriving at proper and valid finding, he relied heavily on the oral submission forwarded by the present respondent. Thus, the impugned order becomes unsustainable and the same can not be upheld.

For the aforementioned reasons, the impugned order of Addl. Collector, Saran is set aside and case is remitted back to Addl. Collector, Saran for passing a fresh and speaking order after examining thoroughly the nature of disputed land as well as the landless status claimed by the petitioner and accordingly to dispose of the case in accordance with law.

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.