

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling Rev. No. 134/2011

Most. Sudha Devi

Vrs.

Lal Mohar Rai & ors.

ORDER

The instant revision petitioner is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 10/2008 on 20.08.2011.

The brief facts of the case are that the land in question measuring 1 katha 8 dhur, appertaining to khata No. 63, plot No. 849 situated in Mouza-Basdila, P.S.-kopa, Dist-Saran was transferred to the present respondent No. 1 Lal Mohar Rai, S/o Late Shiv Janam Rai, R/o Vill-Basdila, P.S.-Kopa, Dist-Saran by one Sanjeev Kumar Pandey S/o Shaligram Pandey through registered sale deed executed on 24.01.2006. Thereafter, the present petitioner Sudha Devi w/o Late Rajeev Kr. Pandey, claiming herself to be co-sharer of the vended land, filed a pre-emption case u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling areas and Acquisition of Surplus land) Act-1961 before DCLR, Chapra Sadar vide case No. 37/2005-06. The case was contested by the parties and the learned DCLR finally vide order dt. 26.02.08 dismissed the pre-emption claim of the petitioner on the ground that the present respondent had purchased the said land for constructing house and the purchaser was a landless person and on homestead land no pre-emption claim was maintainable. Feeling aggrieved by the said order the present petitioner preferred an appeal case vide Land Ceiling Appeal No. 10/2008 before Addl. Collector, Saran which was subsequently dismissed vide order dt. 20.08.2011 on the ground that the order passed by learned DCLR was legally correct and accordingly the same was confirmed. This led to filing of 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 of Addl. Collector Saran, submitted that the same is legally not sustainable as the relevant facts of the case have not been considered appropriately. He further submitted that through the petitioner is a co-sharer her late husband name is mentioned in the sale deed document even then her claim of pre-emption has been rejected on the wrong report of advocate Commissioner with respect to the nature of land. He also argued that even in the sale deed document the description of land has been given as irrigated but the learned Addl. Collector, ignoring this fact relied on the report of pleader Commissioner that the nature of land has been changed into dih-basgit land. He lastly argued that both the learned Court below failed to consider the crucial points that the petitioner being a co-sharer and adjoining raiyat of the vended land her claim of pre-emption was maintainable but the concerned authorities took a wrong view as such the impugned order are fit to be set aside.

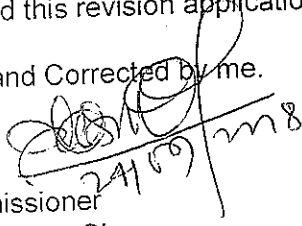
The learned counsel appearing on behalf of the respondent No.1 strongly opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is legally correct. He also argued that the area of the disputed land is just 1 katha 8 dhur and the same was purchased for constructing house and the said land is located beside Chapra-Siwan main road. He also argued that it has been held by the Hon'ble High Court that small piece of land comes outside the purview of section 16(3). He further submitted that the nature of land has been changed into dih-basgit land as several houses, some of them quite old, are located in the vicinity of the disputed plot and this fact was mentioned in the

advocate Commissioner's report. He further said that the respondent is a landless person having no other land for constructing his house. The learned counsel lastly said that the disputed question of fact has already been decided by the both Court below, there is hardly any scope for this Court to decide the same as such the instant petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, rival submission made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case dispute relates to a small piece of land measuring 1 katha 8 dhur. The claim of the petitioner that she being the co-sharer and adjoining raiyat and the land being of agricultural nature, she had got every right to claim pre-emption but her said claim has been rejected by learned Courts below on non-relevant grounds. This plea of the petitioner is acceptable in view of the fact that the name of her late husband of the petitioner is mentioned in the boundary of the disputed plot in the sale deed document and the vendor is full brother of the petitioner besides that the recital of the sale deed shows the disputed land as irrigated land. On the other hand, the said claim of the petitioner has been resisted by the respondent No. 1 on the ground that the said land has been changed into dih-basgit land and he has purchased the same for constructing his house. I find that the learned Courts below have decided the contentious points appropriately and placed heavy reliance on the report of Advocate Commissioner who on local inspection found that the nature of land has been changed much before as several houses were found surrounding the disputed plot. Thus, it appears to me that such a small piece of land no longer remains for smooth agricultural activities rather the same can be used for constructing house as also mentioned so by the purchaser. Although, petitioner case appears to be on strong footing but unfortunately she can not succeed because the pre-emption right itself has been termed as a week right and the same can be defeated by any legitimate means. Since the learned Addl. Collector has appropriately decided the case after careful consideration of the factual matrix, this Court does not find any reason to make any interference in the said order.

For the aforementioned reasons, the impugned order of Addl. Collector, Saran is upheld and this revision application being devoid of any merit is dismissed.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.