

**In The Court of Commissioner, Saran Division, Chapra**  
**Land Ceiling (Pre-emption) Rev. No. 05/2016**

**Amir Hasan Ansari**

**Vrs.**

**Tesrifan & ors.**

**ORDER**

The instant revision application is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 22/2008 on 01.12.2015.

The brief facts of the case are that the disputed piece of land measuring 08 dhur, appertaining to khata No. 26, plot No. 1927 situated in Mouza Piprawas of the Gopalganj district was transferred through registered sale deed dt. 21.11.2007 in favour of Bhola Ansari by one Mansoor Ansari of the same village. Thereafter, the present petitioner claiming himself to be adjoining raiyat and co-sharer of the said transferred land filed a pre-emption case bearing No. Land Ceiling 16(3) case No. 12/2007-08 before DCLR, Hathua. The learned DCLR after hearing the case finally vide order dt. 24.04.2008 allowed the pre-emption claim on the ground that the said land was located in the back side of the pre-emptor's house and the same was necessitated in order to maintain peaceful life of the pre-emptor. Feeling aggrieved by the said order, the purchaser Bhola Ansari filed an appeal case before Collector, Gopalganj and the said case was numbered Land Ceiling 16(3) Appeal No. 22/2008. The learned Collector after hearing the case finally vide order dt. 01.12.2015 reversed the findings of the learned DCLR and holding that the said land was purchased for constructing house and accordingly allowed the appeal. Then the present petitioner aggrieved by and dissatisfied with the order of Collector, Gopalganj preferred the present revision petition before the 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 same has been passed without proper application of mind and even reversed the findings of learned DCLR who clearly mentioned in his order allowing the pre-emption petition that on spot inquiry pre-emption was found adjoining raiyat on north and east side of the disputed plot. He further argued that through the Collector did not deny the adjoining status of the pre-emptor but his final findings is based on irrelevant facts which are normally not considered as relevant point in deciding the pre-emption claim. He also argued that the primary condition regarding for claiming pre-emption right of the petitioner like adjoining raiyat and co-sharer have been completely ignored. The learned counsel further argued that even the nature of land was shown as agricultural land as such pre-emption claim should not have been overlooked. He further said that the learned Collector ought to have held that the gift deed executed by the purchaser Bhola Ansari in favour of his wife Tesrifan on 03.12.2007 was mala fide and was done only with a motive to defeat the pre-emption claim of the petitioner. He lastly said that as the impugned order is illegal and invalid the same is fit to be set aside and this revision petition be allowed.

The learned counsel appearing on behalf of the respondents vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is just and proper having no illegality. He further argued that both purchaser and pre-emptor are full brother and the said land was purchased for constructing house having small area of 8 dhur only. As such a small piece of land can not be used for agricultural

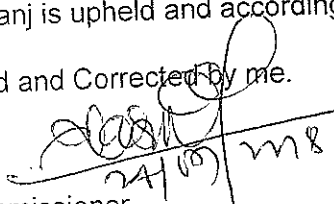


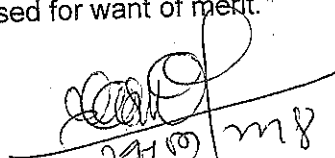
activities rather the same can only be used for residential purpose. He further said that since the purchaser transferred the said land through deed of gift in favour of his wife within 90 days, no pre-emption claim is permissible in law over the gifted land. He lastly said that the present revision application lacking merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order. It is seen that in the instant case dispute pertains to a tiny piece of land measuring 8 dhur only. The claim of the petitioner is that he being adjoining raiyat and co-sharer of the vended land his claim of pre-emption should have been allowed. On the other hand the learned counsel for the respondent resisted the said claim on the ground that as the said land was transferred through gift deed in favour of his wife before the filing of pre-emption application before learned DCLR, no pre-emption claim is maintainable on the gift deed as also held by Hon'ble High Court in several cases. I find some substance in the averments made by the learned counsel for the petitioner. It appears that the small piece of land measuring only 8 dhur situated near the house of the pre-emptor can not be used for agricultural purpose whereas the said land was purchased for construction of house by the purchaser. Even the learned Collector also held that such a small area of land can not be held to be agricultural land and accordingly he dismissed the pre-emptor's appeal on this ground. I do not find any illegality in the said order. The learned counsel for the petitioner failed to point out any specific illegality in the said order.

For the aforementioned reasons, the impugned order passed by Collector, Gopalganj is upheld and accordingly this revision petition is dismissed for want of merit.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.