

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 239/2014

Dhurkheli Mahto

Vrs.

Brahma Upadhayay & ors.

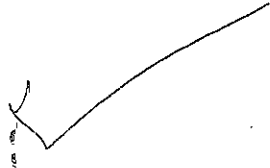
ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal No. 16/2013 on 25.07.2014.

The brief facts of the case are that a case bearing No. Land Ceiling case No. 01/2003-04, Brahma Upadhayay Vrs Dhurkheli Mahto & ors was re-initiated by learned DCLR, Marhaurah pursuant to an order passed by Revenue Board, Bihar, Patna in Board case No. 81/2005 on 22.02.2012. Furthermore, the other facts of the case are the present petitioner Dhurkheli Mahto purchased a piece of land measuring 5 katha 13 dhur of plot No. 2756 and 2757 of khata No. 102 from one Shankesh Kuwer on 21.01.2003. Thereafter, the present respondent No.1 Brahma Upadhayay claiming himself to be the adjoining raiyat of the vended land filed a land Ceiling case No. 01/2003 before DCLR, Marhaurah and the case was rejected. This led to filing of a Land Ceiling Appeal No. 71/2003 before Addl. Collector, Saran and subsequently the appeal petitioner was also dismissed. As a result, the pre-emptor, Brahma Upadhayay filed a pre-emption Revenue case No. 82/2005 before Member, Board of Revenue, Bihar, Patna and the learned Addl. Member, Board of Revenue setting aside the order of learned lower Courts remanded the case back to the DCLR, Marhaurah to inquire into the claim raised by the purchaser regarding landless status and to pass order in accordance with law. The learned DCLR after hearing the parties finally vide order dt. 26.04.2013 allowed the pre-emption claim of the present respondent No.1. Feeling aggrieved by the said order, the present petitioner, preferred an appeal case vide Land Ceiling (pre-emption) Appeal No. 16/2013 before Addl. Collector, Saran. The learned Addl. Collector, after hearing the case finally vide order dt. 25.07.2014 dismissed the said appeal case. On being aggrieved by and dissatisfied with the aforesaid order passed by Addl. Collector, Saran the present petitioner has 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 same is illegal, arbitrary and against the actual facts of the case. He further argued that the learned Addl. Collector has wrongly held that the petitioner has got more than one acre of land as such he can not be held as a landless person and the said finding was based on the cryptic report of C.O. Issuapur. The learned counsel further argued that the land purchased by him, which is under dispute is being used by him for keeping his livestock after constructing Dalan over that. He also said that as the petitioner purchaser qualifies to be a landless person, no pre-emption claim should have been allowed against such person and in support thereof he also referred to various judgements of Hon'ble High Court. The learned counsel also submitted that the law is well settled that no pre-emption claim is maintainable against a landless person but the learned lower Courts below without considering this important fact have allowed the pre-emption claim in favour of the present respondent No.1 which is arbitrary and as such the impugned orders are fit to be set aside and in turn this revision petition be allowed.



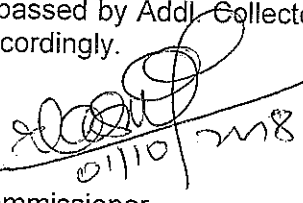
The learned counsel appearing on behalf of the respondent No.1, on the other hand, vehemently opposed the arguments forwarded by the learned counsel for the petitioner with regard to his landless status and submitted that the petitioner is neither a landless person nor the said land is of residential nature. He further submitted that both the learned Courts below have, after careful consideration of all the relevant facts of the case, finally rejected the landless claim of the petitioner. The learned counsel also argued that the pre-emptor's name has been shown in the southern boundary of the disputed plot in the sale deed document and as such the respondent No. 1 becomes the adjoining raiyat so his pre-emption claim has rightly been allowed by both the learned Courts below. The learned counsel also contended that the petitioner has failed to prove his claim of landless status through any supporting evidence. He also argued that the second claim of the petitioner that the said land is of dih-basgit nature has also not been proved. He lastly said that as the learned Courts below has decided the case in favour of the respondent No.1 and rejected the claim of the petitioner, this Court does not have any reason to take a contrary view in the matter as such the present 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 is seen that this case has already travelled a long journey. The petitioner's claim is solely based on the ground that he being a landless person and the disputed land being of dih-basgit nature, no pre-emption claim is maintainable over the land in question. On the other hand the claim of the respondent No.1 is that the petitioner being neither a co-sharer nor an adjoining raiyat of the said land and transferor respectively, his claim of pre-emption has rightly been allowed by the learned Courts below. I find that since the contentious issue of this case has already been decided by the learned Courts below by appreciating the relevant facts available on records, there is no remains to deal with the same issue again at length. In fact, the learned counsel for the petitioner has failed to point out any specific illegality in the findings arrived at by the learned Courts below so as to give any opportunity to this Court to make any interference in its revisional jurisdiction. Whatever pleas raised by the learned counsel for the petitioner do not deserve any consideration now as the same has already been decided appropriately by the learned Courts below. It is seen that the petitioner's counsel has miserably failed to prove his claim to be a valid claim to resist the peremptory right of the respondent No.1, who has very successfully proved his claim before the learned Courts below that he is the adjoining raiyat of the vended land. Thus, I do not find much substance in the assertions made by the learned counsel for the petitioner as such the same can not be accepted.

For the aforementioned reasons, the impugned order passed by Addl. Collector, Saran is upheld and this revision petition lacking merit is dismissed accordingly.

Dictated and Corrected by me.


01/10/2018
Commissioner
Saran Division, Chapra.


01/10/2018
Commissioner
Saran Division, Chapra.