

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 108/2013
Gulab Chand Sahani

Vrs.

Tetari Devi & ors.

ORDER

The instant revision petition is directed against the impugned order passed by Collector, Siwan in Land Ceiling 16(3) Appeal case No.122/2009-10 on 22.02.2013.

The brief facts of the case are that the disputed piece of land measuring 1 katha, appertaining to khata No. 468, plot No. 2566 situated in Mouza Badahu, P.S.-Darauli, Dist-Siwan was purchased by the present petitioner, Gulabchand Sahani S/o Sri Ram Narayan Sahani through registered sale deed dt. 01.02.2006 from one Mosmat Sanwariya Kuwar W/o Late Hajari Sahani after paying the consideration. Thereafter, Sudama Sahani husband of the present respondent claiming himself to be co-sharer and adjoining raiyat of the vended land filed a case before DCLR, Siwan Sadar under the provision of section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961 and the said case was numbered as land ceiling case No. 125/2006-07. During pendency of the said case, the petitioner died and thereafter, his wife, the present respondent was made as party in the case. The learned DCLR after hearing the case, finally vide order dt. 16.01.2010 rejected the said case on the ground that, as the nature of land has been changed into homestead, no pre-emption claim can be granted despite being the claimant is a boundary raiyat. Feeling aggrieved by the said order, the present respondent preferred an appeal case before Collector, Siwan vide Land Ceiling Section 16(3) Appeal case No. 122/2009-10 and the learned Collector, after hearing the parties finally vide order dt. 22.02.2013 reversed the findings arrived at by the learned DCLR and in turn allowed the said appeal case. On being aggrieved by and dissatisfied with the said order of learned Collector, Siwan, the 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 at the very outset of his argument submitted that the impugned order is legally not correct as the same is against the documentary evidence on record. He further submitted that the main claim of the petitioner from the very beginning that he being a landless person and the nature of land has been changed into homestead, no pre-emption claim should have been allowed. But the learned Collector did not record any reason for the rejection of the report of C.O. Darauli who clearly reported that the petitioner was holding less than one acre of land in his name. The learned counsel further argued that the report of C.O. clearly says that the said disputed land's nature has been changed and there are some houses in the vicinity of the said land but the learned D.M. did not consider this important fact and allowed the appeal in favour of the present respondent. He also said that the landless claim of the petitioner was also ignored by the learned Collector. He lastly said that as the impugned order is arbitrary and improper, the same is fit to be set aside and this revision petition be allowed.

The learned counsel appearing on behalf of the respondent, on the other hand, vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is legally valid order having no scope of interference. He further submitted that the respondent being the co-sharer and adjoining raiyat of the vended

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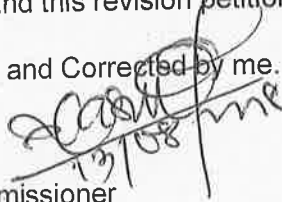


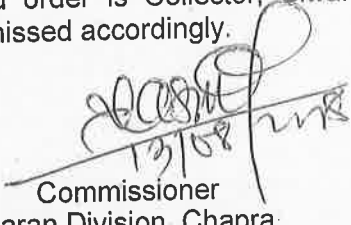
land her claim of pre-emptor can not be rejected on false claim of the petitioner that the nature of land has been changed into homestead and homestead land is outside the purview of section 16(3) of the Act. He further argued that the nature of land is mentioned in the sale deed document as agricultural and even the purpose of purchase has not been mentioned for construction of house, then how can one conclude that the said disputed land's nature has been changed. He further argued that the findings of fact by the appellate Court is based on proper appreciation of the material facts of the case and as such the same can not be reversed and in support of his said contention he also relied upon the reported judgement 2007(4) PLJR. The learned counsel lastly prayed that as the impugned order is just and proper the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, rival submissions made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case all the contentions have been decided by the appellate Court keeping in view the relevant provision of the Act. The sole contention of the petitioner is that he being a landless person and the nature of land has been changed into homestead, the claim of pre-emption is not maintainable but the learned Collector, ignoring the findings of learned DCLR allowed the appeal in favour of the respondent. I do not find much force in the said argument of the learned counsel for the petitioner. In fact, the respondent is the co-share and boundary raiyat of the vended land, the essential conditions required for claiming pre-emption whereas the purchaser, the present petitioner, is neither a co-sharer nor an adjoining raiyat but tries to defeat the pre-emption right of the respondent on the ground of landless status and the nature of land to be held as homestead. I find that the learned Collector, in his detailed and reasoned order has touched upon each and every aspect of the case elaborately before arriving at the findings of fact and subsequently also justified the claim of the present respondent. I do not find any apparent error in the said findings of the appellate Court. The learned counsel for the petitioner has miserably failed to point out any specific illegality in the said findings of learned Collector. What is more, the claim of petitioner that he being a landless person and the land in question has been changed into homestead has been categorically rejected by sound reasonings by the appellate Court. As such I do not find any good ground to make any interference in the said findings.

For the aforementioned reasons, the impugned order is Collector, Siwan is upheld and this revision petition being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.


13/08/08
Commissioner
Saran Division, Chapra.


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Saran Division, Chapra.