

**In The Court of Commissioner, Saran Division, Chapra**  
**Land Ceiling (Pre-emption) Rev. No. 63/2016**  
**Jadolal Chaudhary & ors.**

**Vrs.**  
**Bujhawan Chaudhary & ors.**  
**ORDER**

The instant revision petition is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 08/2010 on 09.02.2016.

The brief facts of the case are that the present respondent No.1 Bujhawan Chaudhary S/o Late Guljar Chaudhary, R/o Vill-Surwania, P.S.-Mirganj, Dist-Gopalganj purchased the disputed piece of land measuring 2 katha, appertaining to khata No. 53, plot No. 226 situated in Mouza Surwahia through registered sale deed dt. 15.02.2010 from one Binod Tiwary of the same village. Thereafter, the present petitioner claiming himself to be the adjoining raiyat of the transferred land filed a pre-emption case before DCLR, Hathua vide Land Ceiling case No. 08/2009-10 for reconveyance of the said transferred land as per provisions of section 16(3) of Bihar Land Reforms (Fixation of Ceiling areas and Acquisition of surplus land) Act-1961. The learned DCLR after hearing the case finally vide order dt. 18.08.2010 allowed the pre-emption claim on the ground that the pre-emptor's name has been shown in the southern boundary of the disputed land thereby his claim of adjoining raiyat is effective. Feeling aggrieved by the said order, the present respondent (purchaser) filed an appeal case bearing Land Ceiling 16(3) Appeal case No. 08/2010 before Collector, Gopalganj. The learned Collector, on the other hand, while disposing of the case reversed the findings of learned DCLR and allowed the appeal in favour of the present respondent on the ground that the present respondent had purchased 20 decimal of land from the same plot No. 226 earlier on 16.09.2008 from one Udaybhan Tiwary and the learned DCLR without recording his findings on this point dismissed the appeal. This led to filing of this revision petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order passed by Collector, Gopalganj at the very outset submitted that the same is illegal and against the facts and law. He further argued that the learned Collector without considering the relevant fact that the petitioner's name has intentionally been left out in the western boundary in the sale deed document only with a motive to dilute the claim of the pre-emptor that he is not the adjoining raiyat from two sides of the disputed land. He also argued that in the southern boundary of the vended land, the name of petitioner has been mentioned and it was on this point the learned Collector took a different view without any justification. The learned counsel further argued that the learned Collector has failed to consider the vital question involved in the case by taking a wrong approach forgetting that the respondent himself given the name of the petitioner in the southern boundary which justifies the claim of the petitioner as adjoining raiyat. The learned counsel lastly said that as the entire order of Collector suffers from illegality, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondents vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that this revision case itself is not maintainable before this Court as the same has been filed on wrong grounds. He further argued that the disputed land was transferred to one Dharmnath

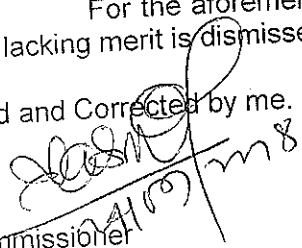


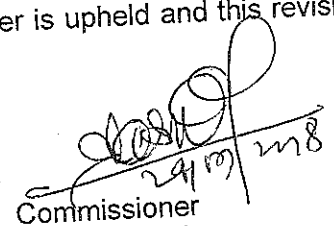
Chaudhary through gift deed prior to filing of original case before DCLR as such pre-emption case is not maintainable on gifted land. He further argued that he learned Collector after considering each and every aspects of the case properly and after perusing the documents passed an appropriate and lawful order. The learned counsel also strongly pleaded that the learned Collector has rightly considered the matter of deed of gift prior to filing of challan by appellant in lower Court, right, title and interest have occurred in favour of Dharmnath Chaudary and on this score alone pre-emption petition of the petitioner is not valid. He also submitted that even the done was not made a party in the proceeding resulting in improper claim for pre-emption. It is also submitted by the learned counsel that the respondent had also purchased land from the same plot from the heirs of recorded tenant as such he can also be considered as adjoining raiyat. He lastly prayed for dismissal of the case for the lack of merit.

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 the only contentious issue requires to be considered as to whether the claim of the pre-emption made by the petitioner is admissible or not in view of the fact that his name show in the boundary of the disputed land. Obviously the claim of the petitioner appears to be justified but his said claim fails on two counts. Firstly the respondent's having also same land by virtue of earlier purchase in the same plot thereby he also becomes the adjoining raiyat of the vended land. Secondly, the respondent after purchased the land transferred the same to one Dharmnath Chaudhary through registered gift deed prior to filing of pre-emption petition before DCLR, Hathua by the petitioner and it has almost been settled in law that pre-emption petition is not maintainable on gift deed until and unless the same is not proved to be a sham and farzi gift deed and the same has been done to defeat the pre-emption claim. From the order of the learned lower Court it appears that genuineness of the gift deed has not been challenged by the petitioner. It is seen that the learned Collector, Gopalganj after considering all aspects of the case properly and appreciating the relevant points has finally rejected the claim of the respondent. I do not find any apparent infirmity in the said order. The learned counsel for the petitioner also failed to point out any infirmity in the said order.

For the aforementioned reasons, the impugned order is upheld and this revision petition lacking merit is dismissed accordingly.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
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Saran Division, Chapra.