

**In The Court of Commissioner, Saran Division, Chapra**  
**Land Ceiling (Pre-emption) Rev. No. 249/08**

**Fakrul Haque**

**Vrs.**

**Ram Chandra Mahto & ors.**

**ORDER**

The instant revision petition is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 12/2006 on 14.08.2008.

The brief facts of the case are that the disputed had measuring altogether 2 katha, appertaining to plot No. 337 & 338 of khata No. 34; plot No. 322 and 199/200 situated in Mouza Kabilashpur was purchased by one Fakrul Haque from one Dukhai Devi W/o Kamal Mahto through registered sale deed on 13.11.2001 on payment of consideration of Rs. 20,000/-. Thereafter on Ram Chandra Mahto, the present respondent filed a pre-emption claim before learned DCLR, Gopalganj on the ground that the purchaser, the present appellant was a stronger. The learned DCLR, after hearing the matter finally vide order dt. 28.04.06 allowed the pre-emption claim holding the present respondent as adjoining raiyat and co-sharer of the disputed land and the land itself is of agricultural in nature. Feeling aggrieved by the said order the present appellant preferred an appeal vide L.C. Appeal No. 12/2006 before Collector, Gopalganj who after hearing the matter finally concluded that the order passed by learned DCLR was a correct order and accordingly the same was upheld by him resulting in dismissal of the appeal case.

On being aggrieved by and dissatisfied with the order of learned Collector, Gopalganj 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 case, submitted that the impugned order has been passed without considering the mandatory provision for claiming pre-emption. He further said that no application for pre-emption is maintainable against the purchaser who is either co-sharer or adjoining raiyat. He also pleaded that even the important fact regarding the purpose of purchase and the description of land given in the sale deed document i.e. Dih-basgit and Awasiya has been completely ignored. He further argued that the learned Courts below failed to consider the fact that the name of the pre-emptor has not been given in any boundary of the deed in question. The learned counsel also submitted that the learned lower Court ought to have held that the purchaser petitioner has purchased the small piece of land for construction of his house and hence pre-emption petition is not maintainable against such purchaser. It has also been submitted by the learned counsel that the nature of land has been changed into residential and several houses are situated surrounding the disputed plot. He lastly said that as both the learned Court below failed to appreciate the relevant facts of the case properly before arriving at the final findings of facts, the said order are fit to be set aside.

The learned counsel for the respondent while vehemently opposing the arguments forwarded by the learned counsel for the petitioner, submitted that it is wrong to say that the pre-emptor is neither co-sharer nor adjoining raiyat but the fact is that the pre-emptor is co-sharer and adjoining raiyat of the disputed land for the reason that the vendor of the said land belong to the same family to which the pre-emptor belongs. He further said that so far as



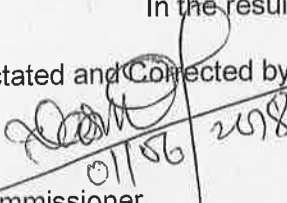
the claim of the petitioner is that the said lands nature is agricultural and the same has been purchased for constructing house, this claim is totally unfounded and even after the local inspection made by C.O. and SDO they also reported that in the said land crops were found grown. He lastly submitted that as the learned Courts below already decided the disputed question, the petitioner can not raise the same question again in the revisional Court.

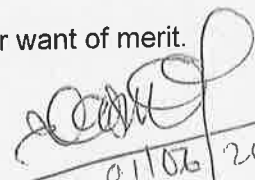
Considering the facts and circumstances of the case, material available on records, claim and counter claims made by the learned counsel for the parties and on perusal of the impugned order. It appears that in the instant case both the learned Courts below appreciating the facts of the case finally held that the respondent is the co-sharer and adjoining raiyat of the disputed land. The only claim of the petitioner is that the nature of the said land is residential one and he has purchased the said land also for the construction of his residential house. But the said claim has not been proved in the local inspection of C.O. and SDO. It is also important to mention here that pre-emption right always goes in favour of co-sharer or adjoining raiyat until and unless the said status of the pre-emptor is defeated by some lawful means. In the instant case as the purchaser petitioner has failed to establish his claim that even the disputed land is not an agricultural land, his plea of disallowing pre-emption claim of the respondent seems to be a invalid claim. The learned counsel for the petitioner failed to point out any specific infirmity or illegality in the said order.

For the aforementioned reasons, the impugned order of Collector, Gopalganj is sustainable, hence the same is upheld.

In the result this revision application is dismissed for want of merit.

Dictated and Corrected by me.

  
01/06/2018  
Commissioner  
Saran Division, Chapra.

  
01/06/2018  
Commissioner  
Saran Division, Chapra.