

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 84/2010

Bihari Ram

Vrs.

Babu Ram Bhagat & ors.

ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 48/2005-06 on 31.08.2010.

The brief facts of the case are that one Bihari Ram S/o Late Bhagan Ram, R/o Vill-Dumar Narendra, P.S.-Bhorey, Dist-Gopalganj purchased a piece of land measuring 1 katha. 02 of plot No. 1583, khata No. 156, situated in Mouza Dumar Narendra through registered sale deed on 01.09.2001 after paying the consideration money. Thereafter, the present respondent No. 1, Babu Ram Bhagat claiming himself to be the adjoin raiyat of the vended land from three sides, filed a pre-emption case bearing Land Ceiling 16(3) case No. 23/2001-02 before DCLR, Hathua. The learned DCLR after hearing the parties and holding that since the petitioner failed to prove that the said disputed land is of agricultural in nature, rejected the case vide order dt. 02.12.2002. Feeling aggrieved by the said order, the present respondent preferred an appeal case vide Land Ceiling 16(3) Appeal case No. 48/2005-06 before Addl. Collector, Gopalganj who vide his order dt. 31.08.2010 reversed the order of learned DCLR and allowed the appeal in favour of the present respondent. This led to filing of the present revision petition by the present petitioner before this Court wherein the impugned order of Addl. Collector, Gopalganj is under challenge.

. 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 bad in law and fit to be set aside because the learned lower Court has not appreciated the relevant evidence and even not ascertained the present nature of the disputed land. He further, while dealing with the facts of the case submitted that the petitioner actually purchased the small piece of land for constructing his house and not for agricultural purpose and the nature of land has also been changed from agricultural to Dih-basgit. He further argued that several houses stand in the vicinity of the disputed land, so it is sufficient to hold that the said land is of Dih-basgit nature. The learned counsel further submitted that as the respondent having enmity with the petitioner, wrongly filed the pre-emption case before DCLR with a view to harass him. He further said that the total area of the disputed land is 4 katha 01 dhur and in the middle of plot No. 1583 a canal runs east to west and only 1 katha 2 dhur land left towards south. He also said that the learned Addl. Collector did not consider the dih-basgit nature of land but the fact is that the learned DCLR in his local inspection found the nature of land to be homestead and it was on that ground he rejected the pre-emption claim of the present respondent. He lastly said that since the learned Addl. Collector, held the disputed land to be of agricultural land on the basis of existence of canal also holding that the pre-emptor's name found in three sides as boundary man of the vended land and on these points he allowed the appeal but he



failed to appreciate the important fact that the said land no longer exist as agricultural land. He lastly prayed for allowing the appeal.

The learned counsel appearing on behalf of the respondent No.1 on the other hand while vehemently opposing the arguments advanced by the learned counsel for the petitioner, submitted that the impugned order is legal and proper as the same has been passed after careful consideration of the required conditions meant for claiming pre-emption. He further submitted that the respondent holds land in three sides of the vended land as such his claim of adjoining raiyat can not be disputed. He further said that so far as the nature of land is concerned, the same is still of agricultural nature and this fact is proved itself as the said land is close to a canal and the same has also been mentioned in the recital of the sale deed and the canal always runs through agricultural land and never through residential areas. He further argued that the claim of the petitioner that the nature of land has been changed to Dih-basgit is also not proved as no spot verification has been done by any authority as claimed by the petitioner. He lastly said that as the respondent claims have been found valid by the appellate Court, the said findings can not be reversed now as such the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter-claim made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, it has been an admitted fact that the present respondent indisputably qualifies to be considered as the boundary raiyat of the vended land as held by both the learned Courts below. The only question remains to be decided as to whether the said disputed land be treated as agricultural land or dih-basgit land. The learned DCLR has held the said land to be non agricultural land in nature and on this ground he rejected the claim of pre-emption while the learned Addl. Collector rejected the findings of the DCLR and allowed the pre-emption claim on the basis that the pre-emptors name has been shown in the boundary of three sides of the disputed land in the sale deed document. However, it is seen that the area of the disputed land is 01 katha and obviously such a small piece of land can not be used for smooth agricultural activities. In fact such a small piece of land can only be used for residential purpose. I find that the learned Addl. Collector has completely overlooked this important aspect. As such the impugned order becomes unsustainable and the same can not be upheld.

For the aforesaid reason, I am not inclined to uphold the impugned order and the same is set aside accordingly.

In the result, the revision petition is allowed.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.