

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (pre-emption) Revision No. 389/2007

Mokhtar Mahto & Ors.

Vrs.

Amirullah Khan & ors.

ORDER

24.09.2015. The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in L.C. appeal Case No. 01/2005 on 31.07.2007

The brief facts of the case are that the disputed piece of land measuring 01 katha 10 dhur, appertaining to khata No. 173 R.s. plot No. 1610 situated in village-Godna, P.S.- Revilganj, Dist- Saran was purchased by the present petitioner, Mokhtar Mahto S/o Late Sheo pujan Mahto R/o the same village from one Hakim Khan S/o Late Ishrail through registered sale deed on 31.07.2004. Thereafter, the present O.P. No. 1 Amirullah Khan claiming himself to be the co-sharer of the disputed land filed a pre-emption case before DCLR, Chapra Sadar vide ceiling Case No. 17/2004. The learned DCLR allowed the pre-emption claim vide order dated 28.12.2004. This led to filing of an appeal case before Addl. Collector, Saran by the present petitioner (purchaser) vide land ceiling Appeal Case No. 01/2005 which was dismissed and on being aggrieved by the order passed in Appeal, the present petitioner has preferred this revision case before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner, submitted that the impugned order is bad in law and against the weight of evidence on record inasmuch as the learned Addl. Collector has misconstrued the ruling cited on behalf of O.P. No. 1. He further argued that the petitioner had made , the vender, the present O.P. No. 2 as a party in the lower court of DCLR but due to inadvertence, the vender was not made party in appeal as the vendor had neither appeared before DCLR nor filed any objection petition but the learned Addl. Collector has wrongly held that vendor is a necessary party in appeal also. He also argued that the learned court ought to have held that the nature of the land has been changed and it has become Dih-basgit land and the petitioner had purchased the said disputed land for construction of his residential house in Muncipal area and even plan for construction of his residential house was passed by the Municipelty. He also submitted that the learned lower court ought to have allowed the prayer of local inspection filed by the petitioner but instead of doing so he erred in rejecting the prayer of local inspection, which was essential for proper decision of the case. He lastly prayed for allowing the revision.

The learned counsel for the o.p. No. 1 while opposing the arguments forwarded by the learned counsel for the petitioner, submitted that the pre-emptor's name is found in the northern boundary of the vended land as per recital of the sale deed as such he enjoys the status of adjoining raiyat of the vended land. He also submitted that the nature of land mentioned as "Kastkari Kaim" in the sale deed. He

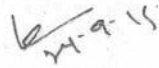
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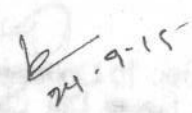
also submitted that after the order passed by DCLR, the petitioner never filed any prayer for stay of registration of the said land and since the said land has been registered by the court of DCLR, the present revision petition is not tenable. He also submitted that the prayer of the petitioner for the issue of commission is not tenable as his early prayer for the same was rejected by the lower court. He lastly submitted that the impugned order is just and proper and the petitioner did not bring any reasonable ground for consideration hence, this revision petition 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 the pre-emption was allowed by the DCLR on the ground that the pre-emptor is the boundary raiyat of the vended land and his name was also shown in the northern boundary of the said land in the sale deed document. The claim of the petitioner (purchaser) is based on the fact that he purchased the said land for construction of his house and the said land is located in the municipal area. I find that both the courts below has already discussed these points and the claim of the pre-emptor that he being the adjoining raiyat of the vended land is conclusively proved in the court below. I have no reasons to take a different view against the concurrent findings of the court below. Moreover, the learned counsel for the petitioner miserably failed to point out any specific infirmity in the impugned order. He only insists for ordering for local inspection which seems to be improper now in view of the fact that the learned DCLR after making local inspection has passed the order and the disputed land has already been registered to the pre-emptor by the court of DCLR.

For the aforesaid reasons, the impugned order is upheld and accordingly this revision petition is dismissed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra