

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 67/2013

Rajesh Kumar Singh & Ors.

Vrs.

Akram Ali & ors.

ORDER


21.09.2015- The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in L.C.(pre-emption) Appeal No. 40/2006 on 29.01.2013.

The brief facts of the case are that one Nageshwar Prasad Narain Singh S/o Late Raghunath Prasad Narain Singh R/o Village- Parsagarh, P.S. -Ekma, Dist- Saran transferred two plots of lands appertaining to Khata No. 988, Plot No. 1703 having area 08 katha 7 dhur through two registered sale deeds executed on 05.08.2005 in favour of Akram Ali and Mohammad Ali, both sons of Mohammad Jahur R/o Village- Parsagarh Nawka Tola respectively. Thereafter, the father of the present petitioner, Bhola Singh, Claiming himself to be the adjoining raiyat of the vended land, filed a pre-emption case No. 27/2005 u/s 16(3) of Bihar Land Reforms (Fixation of ceiling Areas and Acquisition of surplus Land) Act- 1961 before DCLR, Chapra Sadar. The learned DCLR vide order dated 05.08.2006 allowed the pre-emption case. This led to filing of an appeal by the present respondent No. 02 & 3 before Addl. Collector, Saran wherein the said order of DCLR, Chapra Sadar dated 05.08.2006 was challenged on the ground that the purchasers are the landless person and this important fact was not considered by the learned DCLR. After that the learned Addl. Collector, heard the parties and vide order dated 29.01.2013 set aside the order passed by DCLR, Chapra Sadar and allowed the appeal in favour of present O.Ps. No. 2 & 3.

On being aggrieved by and dissatisfied with the aforesaid order the present petitioners have preferred this revision case claiming themselves to be the legal representative of the original preemtor, Bhola Singh, who died during the pendency of the appeal before Addl. Collector, Saran whereupon their names were substituted in the appeal.

This case was finally taken up for hearing on 14.08.2015 and on that day both parties sought one week time and accordingly the court was pleased to fix 28.08.2015 as next date for argument. However on 28.08.2015 the learned counsel for the O.Ps. was absent but the learned counsel for the petitioner stated that O.P. could not be present as he has filed a forged certificate of landless, so last chance be given to him. As prayed for, on subsequent two dates i.e. 31.08.2015 and 04.09.2015, the O.Ps. were absent following which the case was again taken up on 11.09.2015. Even on that day, the O.Ps. were absent and no time petition was filed. At this stage, the learned counsel for the petitioners insisted for disposing of the case on merit as the O.Ps. are not present willingly. Keeping in view the track record of the o.ps, this court has been compelled to dispose of this case through an ex-parte-order.

The learned counsel for the petitioners submitted that the name of his father Bhola Singh has been mentioned in the boundary of transferred land and as he died during pendency of appeal his legal representative are now petitioners in the case. He further argued that the O.P. No. 02 and 03 had taken the stand in the court of DCLR, that the land was purchased by them for the construction of House and they were also landless person and against whom no pre-emption petition is maintainable. But the learned DCLR allowed the pre-emption and also directed the purchasers O.P. No. 02 & 03 to executed the sale deed in favour of the petitioners. He further argued that the learned Addl. Collector, relied upon a certificate of ownership granted by the circle officer, Ekma in favour of the respondents and on that ground alone he allowed the appeal filed by the present respondents. He further submitted that the said



landless certificate claimed to have been issued by the circle officer, Ekma is a forged document because when the petitioner tried to obtain a certified copy of that through RTI Act, he could not succeed and ultimately the petitioner filed an appeal before state information commissioner under the RTI Act. He also submitted that when the petitioner obtained information regarding total land owned by the purchasers from the circle officer, Ekma, he was informed vide Memo No. 515 dated 14.08.2014 that purchasers own two acres of land besides their homestead lands and as such the purchasers are not the landless person. He further argued that as the O.Ps. No. 02 & 03 had filed forged certificate of ownership, hence no body appeared on behalf of them to argue the case. He lastly submitted that either this revision petition be allowed or remanded back to the Addl. Collector, Saran after setting aside the impugned order to decide the case in the light of ownership of land which has been provided by C.O. under the RTI Act.

Although, no body appeared on behalf of the O.Ps. No. 02 & 03 to plead the case on the final date, however, this court finds it necessary to look in to the pleas taken by the O.Ps. in their rejoinder petitioner filed on 2.01.2014. In the said rejoinder the main pleas were that the pre-emptors are neither co-sharer nor boundary raiyat of vended land. Pre-emption case is not maintainable against landless person and the nature of land has also changed from agricultural to homestead and on these grounds the instant revision petition was fit to be dismissed.

Considering the facts and circumstances of the case, material available on records and on going through the impugned order, it is seen that the disputed question to be decided now in this case is as to whether, the impugned order passed by Addl. Collector, in favour of the respondents holding them to be the landless person, on the basis of landless certificate issued by circle officer, Ekma is a valid order or not. The landless certificate available on record appears to be issued by circle officer, Ekma vide S. No. 11 dated 20.02.2006 duly signed and sealed but the said certificate is termed as a forged document by the petitioner on the ground that when he tried to obtain the certified copy of the said certificate under the RTI, the concerned office did not provide the same. Interestingly enough, but when the petitioner sought information about the total land possessed by the respondents from the same circle officer, under the RTI, the required information was provided to him vide Memo No. 515 dated 14.08.2014 that the respondents have got more than two acres of lands in their own possession besides their homestead land. These two information, issued by the same office, which are self contradictory so far as the required information relating to total area of land is concerned creates reasonable doubt about the veracity of the earlier landless certificate issued in favour of the respondents. And the very decision of the appellate Court based on such document, itself becomes improper and invalid inasmuch as findings arrived at on the basis of alleged forged document is not sustainable in law. The averments made by the learned counsel for the petitioner seems to be correct to some extent in view of the contradictory material facts relating to land possessed by the respondents available on the record.

Thus, for the aforementioned reasons, the impugned order is not sustainable and hence the same is set aside and the matter is remitted back to Addl. Collector, Saran with a direction to make a proper enquiry with regard to the landless certificate dated 20.02.2006 issued in favour of the present respondents and also about the subsequent information provided under the RTI Act to the petitioner vide Memo No. 515 dated 14.08.2014 by the circle office, Ekma with respect to the land possessed by the respondents as well as genuineness of the earlier certificate dated 20.02.2006. Moreover the learned Addl. Collector is directed to hear the matter a fresh after making inquiry into the matter as observed above and only after that on hearing the parties pass afresh order in accordance with law.

Accordingly, this revision petition is disposed of.

Dictated and Corrected by me.

b
21-9-15
Commissioner,
Saran Division, Chapra

b
21-9-15
Commissioner,
Saran Division, Chapra