

**In The Court of Commissioner, Saran Division, Chapra**

1. Land Ceiling (Pre-emption) Revision No. 211/2008
2. Land Ceiling (Pre-emption) Revision No. 212/2008
3. Land Ceiling (Pre-emption) Revision No. 213/2008

Prithivi Nath Singh & ors. .... Petitioners

Vrs.

Rashida Khatoon & ors. .... Respondents

**ORDER**

16.09.2015- All the abovementioned three Land Ceiling (Pre-emption) revision cases were originally filed before the Board of Revenue, Bihar, Patna but later on all these cases were transferred in the Court of Divisional Commissioner, Saran, Division, Chapra in compliance with the order of Hon'ble High Court passed in CWJC No. 1986/2007 on 03.04.2007.

All the abovementioned revision applications are directed against the common impugned order passed by Addl. Collector, Saran on 18.09.2006 in three separate Land Ceiling Appeal cases Nos. 26/2003, 27/2003 & 28/2003 and in all these appeal cases the petitioners and respondents are the same.

Since the facts and issues involved in all the three revision petitions are the same, these cases were heard together and are being disposed of by a common order.

The brief facts of the case are that the vendor Ashok Kumar Singh and Rama Shankar Singh, both sons of Late Bhuneshwar Singh, R/o Vill-Senduari, P.S. - Marhaurah, Dist-Saran transferred certain piece of land, whose detailed description is given below to one Md. Sharif, S/o Late Abdul Sakor of the same village through three registered sale deeds on 13.09.2002. The details of the disputed land are as follows.

Village	P.S.	Khata No.	Plot No.	Area	
Senduari	Marhaurah	59	441	2 Khata 14 dhur	First sale deed
		90	399	3 Khata 08 dhur	
		184	253	3 katha 12 ¼ dhur	
		90	399	6 katha 15 dhur	Second sale deed
		416			
		90	399	6 katha 18 dhur	Third sale deed
416					
		184	2053	2 katha 10 dhur	

Thereafter, Jagdish Singh and Kedar Singh, both sons of Late Raj Narain Singh, R/o of the same village claiming themselves to be the co-sharer and adjoining raiyat of the vended land filed three pre-emption cases before DCLR Marhaurah vide pre-emption case No. 17/2002, 18/2002 and 19/2002 by making the purchaser, Md. Sharif as o.p. No. 1 and later on Rashida Khatoon wife of Md. Sharif was also made party in case as per the order of learned DCLR. After that the learned DCLR on hearing the parties finally allowed the pre-emption claim vide order dt. 16.05.2003. However, the

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present respondent Rashida Khaton, feeling aggrieved by the said order of DCLR filed three separate appeals before Addl. Collector, Saran with the claim that as the disputed land was transferred by her husband through gift deed to her before the filing of pre-emption petition before DCLR, she has accrued the right to defend her interest. Accordingly L.C. Appeal Nos. 26/2003, 27/2003 and 28/2003 were registered by Addl. Collector, Saran. The learned Addl. Collector, Saran after hearing the parties finally allowed all the three appeals in favour of the present respondent through a common order passed on 18.09.2006.

On being aggrieved by and dissatisfied with the aforesaid order the present petitioners have preferred three revision cases before the Board of Revenue and subsequently these cases were transferred to this Court. The present petitioner are the legal heirs of the original pre-emptor who died during the pendency of the appeals before Addl. Collector.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioners at the very outset of his arguments, assailed the impugned order by saying that the said order is illegal, erroneous and fit to be set aside. He further argued in detail about the whole issues involved in the case and strongly submitted that the vendee, Md. Sharif has transferred the land in question to his wife through gift deed only with an intention to defeat the pre-emption right of the petitioners. He further submitted that the donee has no right to file appeals against the impugned order passed by DCLR but the said appeals were admitted and subsequently disposed of by the learned Addl. Collector by completely ignoring the relevant provision of section 16 (3) of Bihar Land Reforms (Fixation of Ceiling areas and acquisition of Surplus Land) Act-1961. He also submitted that in a pre-emption case donee has no role to play in case reconveyance of land is ordered. The learned counsel further quoted the relevant provisions of section 16 (3) and Rule-19 and 30 of the Land Ceiling manual and its applicability in the present case. He further argued that the petitioners are the co-sharer and adjoining raiyat of the vended land and the purchaser with a aim to defeat their pre-emptory right transferred the said land to his wife through gift deed knowingly and the said transfer is sham and Farzi but the learned Addl. Collector, Considered the same to be valid transfer under the Mohamddan Personal law whereas such law has no applicability in the present case. The learned counsel lastly pleaded that as the impugned order suffers from the vice of arbitrariness, the said impugned order is not fit to be upheld and the same is fit to be set aside.

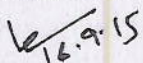
The learned counsel appearing on behalf of the respondents, while strongly opposing the assertions made by the learned counsel for the petitioners, briefly submitted that this revision petitions are not maintainable as it has been settled in law that no pre-emption claim can be made if the land in question has been transferred through gift before the filing of pre-emption case before the DCLR. He further submitted that the disputed land was transferred through registered gift deed by the purchaser to his wife on 08.11.2002 much before the filing of pre-emption petition and to substantiate his claim he also referred to the reported judgment of Division bench of Hon'ble High Court Patna (AIR-1986 PATNa-95, Dhanik Lal Mahto & ors. Vrs Addl. Member, Board of Revenue). He further argued that the purchaser and subsequently the donee also became adjoining raiyat of the disputed lands as he purchased portion of same R.S. plots which are adjacent to each others and in this connection he also relied on a reported judgment of the Division bench of the Hon'ble High Court passed in LPA No.

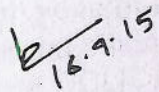
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929/1998 Upendra Thakur Vrs The State of Bihar and ors. 2008(3) PLJR-page-378 .  
The learned counsel lastly submitted that the impugned order is quite correct and legal and there is nothing to make any interference in the said order.

Considering the facts and circumstances of the case, material available on records, respective claims made by the parties, written statements filed by the parties in support thereof and on perusal of the impugned order, it is quite obvious that the only important question needs to be considered now as to whether the findings arrived at by the learned Addl. Collector, Saran in holding that pre-emption is not maintainable on a gifted land is in conformity with the provisions laid down under section 16(3) of the Bihar Land reforms (Fixation of Ceiling area and acquisition) of surplus Land Act-1961 or not. The contention raised by the petitioners counsel is that the said gift deed is a sham and Farzi as the same was executed with a view to defeat the pre-emption right of the present petitioners as they are the adjoining raiyat and co-sharer of the vended land. However, the learned counsel for the respondents contradicts the said assertion of the petitioners counsel on the ground that the said gift deed was executed and registered much before the filing of pre-emption petition so it is completely wrong to say that the said gift deed was executed with ulterior motive of defeating the pre-emption right of the petitioner rather the same was necessitated as per the Muhamddan law as the husband owes to give some thing to his wife either in cash or kind after marriage as the same is promised before marriage so the said gift deed is genuine and valid. However, the other issue needs to be decided relates to maintainability of the pre-emption petition over the land transferred through gift deed. The learned counsel for the petitioners is of the firm view that as the gift deed was executed by the original purchaser in favour of his wife only in respect of the purchased land, the said gift itself becomes farzi and the findings of learned Addl. Collector about its genuineness in the context of Muslim law is not legal as per the definition of family defined in the land Ceiling Act. The learned counsel for the respondent is of the view that no pre-emption claim is maintainable when the land in question is transferred through gift much before the filing of pre-emption petition and in support of that he also placed heavy reliance on the findings of the Division bench of Hon'ble High Court in the case of Dhanik Lal Mahto & ors. Vrs The State of Bihar and ors. wherein it has been categorically held that right of pre-emption can be defeated by a valid bonafide gift by original transferee prior to filing of application for pre-emption. Thus, it appears that it has been almost settled in law that pre-emption petition is not maintainable in case of gift deed executed in respect of disputed land before filing of pre-emption case. I find that the factual situation of the instant case squarely fits with the factual matrix of the case referred above and I do not find any reason to take a different view in the matter what has already been settled in law. Moreover, the petitioners counsel has not been able to prove the said gift deed as invalid or inoperative. The learned Addl. Collector, after carefully considering each and every aspects of the case, arrived at his findings. Accordingly, no case is made out for any interference by this Court, as such, these revision applications are dismissed.

Dictated and Corrected by me.

  
16.9.15  
Commissioner,  
Saran Division, Chapra

  
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