

In The Court of Commissioner, Saran Division, Chapra  
Land Ceiling(Pre-Emption) Rev. No. 41/2011  
Srimati Devi  
Vrs.  
Ravikant Bhagat & Ors.

C.A.3.2014

ORDER

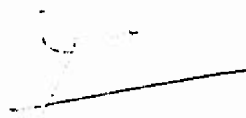
The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal Case No. 68/2003 on 28.03.2011

The brief facts of the case are that Srimati Devi W/o Birendra Kumar Singh R/o Village- Majhanjura, P.S.- Manjhi Dist-Saran purchased the disputed piece of land measuring 1 Khata 17 dhur from one Ramanand Singh of the same village through registered sale deed registered on 19.05.2003. Thereafter, one Motilal Bhagat, the brother of present O.P. No. 1 filed a pre-emption case bearing No. 26/2003-04 before DCLR, Chapra Sadar u/s 16(3) of the Bihar Land Reforms (Fixation of ceiling Areas and Acquisition of surplus land) Act – 1961, claiming himself to be the boundary man of the land transferred as the name of his maternal grand father Deo Prasad has been mentioned in the western boundary of the vended land. But the said pre-emption case was dismissed by DCLR, vide order dated 28.10.2003 after finding during local inspection that the disputed land was no longer the agricultural land and being used for residential purpose and the purchaser being a landless lady. Feeling aggrieved by the said order the present respondent filed an appeal vide L.C. Appeal Case No. 68/2003 before Addl. Collector, Saran who by his order dated 28.03.2011 reversed the earlier order of DCLR, Sadar Chapra and allowed the appeal.

On being aggrieved by and dissatisfied with the aforesaid order passed by the appellate authority, the Addl. Collector, Saran the petitioner has preferred this revision petition before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order of Addl. Collector, submitted that the order is bad and erroneous as it is based on surmises and conjectures. He further argued that the original pre-emptor, Motilal Bhagat was neither co-sharer nor adjoining raiyat of the vended land because of the fact that actually in the western boundary of the vended land there is a road but it was due to mistake the name of Deo Prasad was mentioned in the sale deed. He further claimed that since the land shown to be in western boundary of vended land on that basis the pre-emption was claimed, and the land not in the name of pre-emptor rather it was in the name of her mother who is alive on the date of filing, so the case was not maintainable. The learned counsel also claimed that the purchaser is a landless lady and she purchased the small piece of land for



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constructing her residential house and also for carrying milk business and for starting a grocery shop for her sons. In support of his claim of landless he also filed a copy of the certificate issued by C.O., Manjhi. The learned counsel also submitted that the disputed lands nature is not agricultural for last fifty years back and now it is well connected with N.H. 19 and in the vicinity there are several houses of belonging to Anirudh Rai, Shankar Rai, Nanhak Ray, Sheoji Mahto, Parsuram Sharma and there is also a saw mill and chiura Mill. The nature of land is not agricultural at all. He further said that the pleader commissioner, and the learned DCLR, also during local inspection found that the petitioner's residential house is there and she being a landless lady. The learned counsel in his written arguments raised certain issues important to for consideration and accordingly he also answered the same. The issues No. 1. Whether the pre-emptor is boundary man of the vended land and he has got right to file this case. The petitioner counsel says that the pre-emptor has got no right to file pre-emption case against the vendee in view of the reported decision of Hon'ble High Court, PLJR. 2004(2) page 33 a wherein it has been held that "Land in dispute here being petitioner's maternal property, acquired by his mother, can not be claimed as to having any interest during life time of his mother unless the same is transferred by her in his favour."

The second issue whether the purchaser is a landless lady. To answer this he says that it is correct as the learned DCLR, himself found so doing local inspection.

The third issue whether the pre-emptor (o.p. No. 1) is co-sharer of vended land?. To answer this he admit that in this case the petitioner is claiming pre-emption right not on the basis of co-sharer rather on the basis of boundary man. Regarding fourth issue, whether the nature of land in question has been changed ? This answer is also in affirmative in view of the findings recorded by the DCLR, himself in local enquiry report.

The learned counsel lastly prayed that in view of this contention this revision petition is fit to be allowed.

The learned counsel appearing on behalf of the o.p. No. 1 instead of forwarded his arguments he assured the court to file his written statements. The learned counsel of o.p. No. 1 in his written statements states that the nature of land mentioned in the sale deed as "do fasla" which is sufficient to show that the disputed land is agricultural in nature. He further says that the purchaser family is still joint and having more than five bigha of ancestral including purchased land and several plots of land standing in the name of the father in law of the purchaser and Jamabandi in respect of these lands exist in the Register II of Manjhi and Reviliganj circle office.




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Considering the facts and circumstances of the case material available on records and oral and written statements made available by the contesting parties, it appears that the dispute relates to a small piece of land measuring 1 Khata 17 Dhur, and its location in residential areas can not be held to be a culturable land for all purpose. It is also seen that both the parties are fighting their case since last 10 years without any satisfactory result to either parties. The original authority DCLR, disallowed the claim of pre-emption but the appellate authority Addl. Collector, reversed the earlier order. However, at this stage I find some force in the arguments advanced by the learned counsel for the petitioner as he throws light and substantial proof relating to his claim that petitioner being a landless lady, regarding the nature of land changed from agricultural to residential and the Pre emptor, does not qualify for claiming pre-emption as no land exists in his name on the western boundary of the vended land, rather it was the land which exists in the name of his grand uncle and after his death her mother inherited the property who is alive. On the other hand the learned counsel tried his best to contradict the issue raised by the petitioner counsel in his support, but he failed to produce any reliable documentary evidence in support of that, so as to neutralise the claim of the petitioner.

Furthermore, It is almost settled by series of judgements of Hon'ble High Court that pre-emption is undoubtedly a weak right and in case of doubt or difficulty, the court will lean in favour of purchaser and the purchaser will always be entitled to defeat the claim of pre-emption by lawful means. In this case the purchaser seems to have better claim than the pre-emptor. But the learned Addl. Collector failed to consider the issues raised before him in its true perspective and in the light of the observations of the Hon'ble High Court made in c.w.j.c no-4594 and 4599 of 2000, reported in PLJR 2004(4) page no-480.

Thus, for the reasons above, the impugned order of Addl. Collector is set aside and this revision is allowed.

Dictated & Corrected by me.

  
~~Commissioner,~~  
Saran Division, Chapra

  
~~Commissioner,~~  
Saran Division, Chapra 2014