In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 162/2013

Sushila Devi

Vrs.

Bhagwan Ray & Ors.

ORDER

28.02.15 The instant revision is directed against the impugned order passed by Collector, Siwan is L.C. 13(3) Appeal No. 36/2009-10 on 16.04.2013.

The brief facts of the case are that one Sushila Devi W/o Ashok Ray R/o Village- Barkagaon, P.S.- Bhagwanpur Hat Dist- Siwan purchased the disputed piece of land measuring 15 dhur and 2 dhurki appertaining to Khata No. 1267 plot No. 2218 situated in the same village from one Shanti Kuwar through registered sale deed on 15.09.2008. Thereafter, the present respondents claiming themselves to be the adjacent raiyat of the transferred land, filed a pre-emption petition before SDM, Mahrajganj vide L.C. Case No. 06/2008-09 which was disallowed by order dated 07.07.2009. Then the present respondents approached the appellate authority the Collector, Siwan by filing an appeal bearing No. L.C. 16(3) Appeal No. 36/2009-10 and the same was allowed in favour of the present respondent vide order dated 16.04.2013.

On being aggrieved by and dissatisfied with the aforesaid order of Collector, Gopalganj dated 16.04.2013, the present petitioner (purchaser) approached this court in revision.

Heard the parties.

The learned counsel appearing on behalf of the petitioner submitted that the purchaser being the landless lady, purchased the disputed land for the purpose of construction of her house and just after purchase she has constructed her house and living therein. He further argued that the learned SDM after considering all aspect of the case disallowed the pre-emption claim of the pre-emptor but the learned Collector without considering the legal aspect of the case allowed the appeal in favour of the pre-emptor. He further argued that the learned Collector completely misunderstood the fact that the provision of Land ceiling Act is not applicable against the purchaser who is a land less lady and the disputed land is not an agricultural land rather it has taken the shape of Dih-basgit land having so many houses in the vicinity of the disputed land. He

also pleaded that the learned lower court should have held that the nature of land changed from agricultural to homestead and hence, pre-emption petition is not maintainable on such land.

The learned counsel appearing on behalf of the respondents submitted that the respondents are the adjacent raiyat of the vended land and it is on that basis the learned Collector allowed the appeal in their favour. He further argued that the purchaser is not a landless lady and there is nothing in the sale deed to suggest that the disputed land has been purchased for construction of House. He also argued that the impugned order of Collector is just and proper, hence the some may be upheld.

Considering the facts and circumstances of the case , material available on records and on going through the claims and counter-claims forwarded by the learned counsel for the parties , it is seen that the dispute between the parties hinges on two important points. Firstly, whether the disputed land's nature has been charged from agricultural to homestead and secondly whether the petitioner qualifies or not to be considered as a landless lady. The petitioner claims that soon after purchasing the land she has constructed her house. This obviously shows that the said land was meant for residential purpose and this plea of petitioner has not been controverted by the respondent through any strong evidence beyond reasonable doubt. The second point that the petitioner is the landless lady, although, challenged by the respondent, but no documentary evidence produced before appellate authority to nullify the claim.

From the above discussion , it becomes apparent that the purchaser (petitioner) has purchased the tiny plot for residential purpose and such a tiny plot can not be assumed to be used for agricultural practices. The pre-emptor also miserably failed to prove otherwise.

In the light of the aforesaid discussion and reasons cited above, the order of the Collector, Siwan allowing pre-emption is found defective and hence the same is set aside and in the result this revision is allowed

Dictated and corrected by me.

Commissioner,
Saran Division, chapra

28.2.15

Commissioner,
Saran Division, Chapra