

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA**Land Ceiling (Pre-emption) Revision No. 9/2008 & 10/2008****Vishwa Karma Singh Petitioner****Vs****Mohan Lal Sharma & Ors..... Respondents****ORDER****15.3.2013**

The aforesaid two revisions petitions are directed against the common impugned orders passed by Addl. Collector, Saran in two separate LC appeal case bearing No. 28/2004 and 29/2004 on 20.9.2007 which are being disposed of by a common order as prayed for by the learned counsels for the parties.

2. The relevant facts of the case in brief are that the disputed two pieces of land measuring 3 Katha 7 dhur and 2 Katha 1 dhur appertaining to khata No.215 in plot No. 1071, 1022 and 1023 situated in Vill. Bhatha, PS Maker, District Saran were transferred to the present petitioner through two registered sale deeds on 12.4.2003 by one Janak Lal Singh of the same Vill. Thereafter, Mohan Lal Sharma claiming himself to be the full brother of Janak Lal Singh, present respondent No.2 to this revision petition, filed two pre-emption cases bearing No.30 and 31 of 2003-04 before DCLR, Chapra Sadar. The learned DCLR, Chapra Sadar disposed the two cases vide ex-party common order passed on 24.11.2003 where in the pre-emption was allowed. Then the present petitioner filed two separate appeal cases bearing LC appeal No. 28 & 29 of 2004 before Addl. collector, Saran challenging the ex-party order of DCLR. The learned Addl. Collector, Saran admitted the cases but finally dismissed them through a common order dated 20-9-2007 holding that appeals were hopelessly time barred. On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the petitioner preferred two separate revision cases before this Court.

3. Heard the parties. The learned counsel appearing on behalf of the petitioner submitted in detail as to how he was denied justice and pre-emptions have been allowed illegally in the favour of respondents. He argued in support of his stand that the lower Court record would show that when the cases were filed in the lower Court, the Court ordered that notice to be served on the OPs by

registered post. The notice by registered post appears to have been issued and the postman visited the place on several dates but as he was in Assam, the same could not be served to him and in spite of that the DCLR dismissed his case ex-parte. The learned Counsel further submitted that although he filed appeals against the impugned order of DCLR, before the Addl. Collector, Saran explaining the delay caused in filing the appeals yet the learned Addl. Collector, without considering the factual position dismissed the appeals on the ground of limitation alone. The learned counsel further arguing his case submitted that the petitioner's name appears in the northern boundary of the disputed land in the sale deed document. The learned counsel also strongly submitted that such being the position the order impugned can not be sustained in violation of the principle natural justice and also the rules applicable for the just decision of the case and in all fairness it is expedient in the interest of justice to set aside the impugned order and case be remanded back to the lower Court for fresh decision after affording opportunity to the petitioner to file his show cause and documents.

4. The learned counsel appearing on behalf of the OPs submitted that after condoning the delay by Adll. Collector notice was issued to the OP and after hearing both parties, the impugned order was passed. He further submitted that the appeals of the petitioner was dismissed on 20.9.2007 but the petitioner claimed to have got knowledge of the same through his advocate on 18.12.2007 and obtained C.C. of the order on 9-1-2008 then preferred revision but in the meantime the DCLR executed the sale deed in favour of pre-emptor on 17.6.2004 after due notice to the petitioner but he did not appear. He further argued that appeal was preferred about 7 months of the order of DCLR without any proper reasoning and therefore the appeals were dismissed appreciating the facts and law involved in the appeals. He also said that it is a well settled principle of law that the Court can not help the sleeping litigants. He lastly submitted that these revisions are not maintainable after such a long gap therefore, liable to be dismissed.

5. A bare reading of section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act, 1961 makes it amply clear that application for pre-emption can be filed if the purchaser of the land is neither a share holder nor an adjoining raiyat while the pre-emptor is either a co-sharer or an adjoining raiyat or both (and the land is agricultural in nature). In other

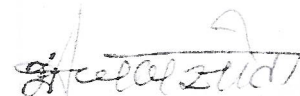
words pre-emption can not be allowed at all if the purchaser of the disputed land is himself an adjoining raiyat or a co-sharer even if the pre-emptor fulfills these conditions. "The right of pre-emption is a very weak right. The onus is upon the pre-emptor to prove his case absolutely" (Dhaka Singh vs Baleswar Prasad Singh: 1987 PLJR (NOC) 21; 1987 BRLJ 426). In this claim the petitioner-purchaser claims that he is an adjoining raiyat in the northern boundary. This claim has not been contested or disproved. In that case there can be no pre-emption by anybody under the provision of law.

6. On the other hand the respondent claim that he (Mohan Lal Sharma) is the full brother of transferor (Janak Lal Singh). This may be true or false. Even if it is true, does this prove that pre-emptor is a co-sharer or an adjoining raiyat- it is doubtful? Even if he really is a co-sharer or an adjoining raiyat he still has no right of pre-emption as long as the purchaser is also an adjoining raiyat. The nature of land is also important. "If there is no finding that the land in question is agricultural in nature and the pre-emptors are adjoining raiyats or co-sharers, the plea of pre-emption can not be allowed"- [Urmila Devi vs State of Bihar, 1998(1) PLJR 758 etc.]

7. The learned Additional Collector first admitted the case and later dismissed it as time barred without deciding the case on merit. The courts are competent to accept or reject petition for condonation of delay under the Limitation Act. Admittedly there was delay in filing appeal. But it is strange that the appeal, once admitted, was again dismissed as time barred. In this court also this revision was filed way back on 10.1.2008 and was admitted on 18.3.2008 after the delay was condoned. This stage is no longer appropriate time to question the delay or its condonation then.

8. I therefore find that the impugned orders do not deserve to be sustained and I accordingly set them aside and remand the cases to the DCLR, Sadar, Chhapra to reconsider the cases in accordance with the provisions of law and pass a fresh order.

Suresh



(C. Lalsawta)

Commissioner, Saran Division, Chhapra