

**In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Revision No. 82/2013**

Yogendra Rawat

Vrs.

Sukuwaria Devi & Ors.

ORDER

10.03.2015 The instant revision application is directed against the impugned order passed by Collector, Gopalganj in L.C. 16(3) Appeal Case No. 04/2009 on 12.08.2013.

The brief facts of the case are that the disputed piece of land measuring 13 dhur towards east of R.S. plot No. 522 of Khata No. 112 situated in village- chiutaha p.s. Baikunthpur, Dist- Gopalganj was executed through registered sale-deed in favour of present respondent No. 2 by present respondent Nos. 3-5 on 10.06.2003. Thereafter, the present petitioner claiming himself to be the adjoining raiyat of the disputed land, filed a pre-emption case vide L.C. case No.12/2003 before DCLR, Gopalganj. The learned DCLR, vide order dated 09.10.2006 allowed the pre-emption in favour of the present petitioner. This led to filing of an appeal by the purchaser (present respondent) before Collector, Gopalganj vide L.C. Appeal No. 23/2006 who in turn vide order dated 14.08.2008 set aside the impugned order of DCLR dated 09.10.2006 and remanded the case back to the DCLR with specific direction to ascertain the claim of the adjoining raiyat by holding local inspection and also to verify whether the disputed land is of agricultural or homestead nature. However, the DCLR on after making local inspection and after hearing the parties held the disputed land to be the agricultural one and accordingly allowed the pre-emption claim of the present petitioner. The purchaser again challenged the impugned order of DCLR by filing a fresh appeal case bearing No. L.C. - 16(3) Appeal No. 4/2009 before Collector, Gopalganj which was allowed in favour of the present respondent vide order dated 12.02.2013.

On being aggrieved by and dissatisfied with the foresaid appellate order, the petitioner(pre-emptor) preferred this revision.

Heard the parties.

The learned counsel appearing on behalf of the petitioner submitted, at the very outset, of his argument that the disputed land is agricultural and the petitioner is the boundary man of the disputed land which has been recorded by the learned DCLR in his spot inquiry as such he allowed the pre-emption in favour of the petitioner. He further submitted that the learned Collector without properly considering the case of the petitioner and having misconstrued the report of the DCLR, allowed the appeal in favour of the present respondent. The learned counsel further argued that mere presence of one hut can not change the nature of land from agricultural to homestead and it was also found that residential houses were located at far away distance from the disputed land. He further pleaded that the purchaser in order to defeat the pre-emption right of the petitioner transferred the land in favour of his wife through gift deed.

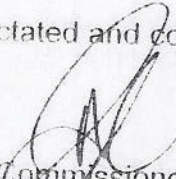


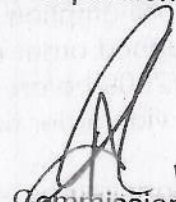
The learned counsel appearing on behalf of the respondent submitted that the respondent purchased the small piece of land measuring only 13 dhur for construction of house and the nature of land described in the sale deed as homestead. He further argued that the learned Collector on carefully examining all the material facts of the case rejected the findings of the DCLR and accordingly allowed the appeal in favour of the respondent. The learned counsel also heavily relied on several judgements of Hon'ble High Court in which it has been held that small piece of land can be treated as homestead land and on such land pre-emption right can not be availed.

Considering the facts and circumstance of the case, material available on records and on going through the claims and counter claims raised by the learned counsel for the parties, it is seen that here the dispute between the parties is over a tiny plot which measures only 13 dhur. The petitioner claims that irrespective of the size of the disputed plot the same is of agricultural nature. But the purchaser (respondent) claims that not only size but the purpose of purchase also shows that the said disputed land is changed in to homestead. I also find that such a small piece of land can not be used for agricultural purpose. On this score alone the claim of the petitioner becomes unacceptable. On the other hand the claim of the respondent seems to be justified in views of the fact that such a small piece of land is to be used for residential purpose. Besides the lower court has clearly observed in its order that the disputed land was found to be residential in nature on spot inquiry.

For the aforesaid reasons, I find that the learned Collector has considered all aspect of the case while arriving at a conclusive finding about the nature of land while allowing the appeal in favour of the present respondent. As such the impugned order is upheld and this revision is dismissed.

Dictated and corrected by me.


Commissioner,
Saran Division, chapra

 10.3.15
Commissioner,
Saran Division, Chapra