

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Revision No. 127/2014

Asharfi Rai
Vrs.
Rajendra Rai

ORDER

21.04.2016

The instant revision application is directed against the impugned order passed by Addl. Collector, Saran in Land ceiling (pre-emption) Appeal No. 29/2012 on 31.03.2014

The brief facts of the case are that the disputed plot, appertaining to khata No. 31, Plot No. 3370, having area 2 katha situated in Mouza Gaura, P.S.-Marhaurah, Dist- Saran was transferred by one Bhola Rai S/o Late Muneshwar Rai of the same village in favour of the present petitioner Asharfi Rai S/o Late Mahanth Rai, also of the same village through registered sale deed executed on 26.02.2011. Thereafter, the present respondent Rajendra Rai S/o Late Braham deo Rai claiming himself to be the adjoining raiyat of the vended land, filed a pre-emption case before DCLR, Marhaurah vide Land Ceiling Case No. 02/2011-12 and the said pre-emption case was allowed vide order dated 11.08.2012. Feeling aggrieved by the said order of the learned DCLR Marhaurah, the present petitioner preferred an appeal vide L.C. (pre-emption) Appeal No. 29/2012 before Addl. Collector, Saran who also vide his order dt. 31.03.2014 confirmed the order of learned DCLR and accordingly rejected the said appeal. On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the present petitioner has preferred the instant revision petition before the Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order of the learned Addl. Collector, strongly submitted that the said order is illegal, erroneous and fit to be set aside as the same has been passed without appreciating the relevant facts of the case appropriately. He further submitted that although, the respondent pre-emptor claimed his right of pre-emption on the basis of plot No. 3371, which is contiguous south of the disputed plot No. 3370, then how can his pre-emption right be allowed on the basis of that plot in which the pre-emptor's residential house is situated. He further argued that this itself is sufficient to show that if the plot No. 3371 whose nature has been changed from agricultural to homestead then how can the disputed plot be amalgamated with the residential plot for agricultural purpose. It is also submitted by the learned counsel that the total area of the plot No. 3370 is 6 katha 9 dhur as per R.S. khatian, but its area is actually 6 katha 3 dhur as per R.S. map and prior to the purchase of the disputed plot the petitioner had purchased 2 katha land on 15.02.2011 in this plot from extreme west which extended upto the road existing towards extreme east. He further argued that the petitioner has also become adjoining raiyat of the disputed land by virtue of his earlier purchase of 2 katha land from the same plot and from the same vendor on 15.02.2011. In support of his contention, the learned counsel also drew the attention towards the sketch map appended at the bottom of the revision petition besides fling copy of the sale deed document of 15.02.2011. The learned counsel also submitted that it was actually due to mistake of the scribe that the name of one Rajendra Rai was show in the northern boundary but in fact it was the petitioner whose name should have been mentioned in the northern boundary. He further argued that although the petitioner has repeated raised the points before the Court below that he himself qualifies to be considered as the boundary man of the vended land and secondly as the pre-emptor's residential house is located in the plot No. 3371, so the pre-emption should not have been allowed but the learned Courts below ignored the pleas and relied upon the pleader Commissioner's report, appointed by the appellate Court, and the said report was highly collusive and manipulated one as the sketch map drawn does not even shows the name of the person having land in the different boundaries of the disputed land. The learned counsel further submitted that had the pleader Commissioner noted the boundaries in his report, the residential house of the respondent would have come in the light and in that situation the respondent's claim of pre-emption would have been automatically seized. The learned counsel also strongly submitted that the learned Addl. Collector, instead of considering the actual facts existing at the ground level, relied heavily upon the so called pleader Commissioner's report and also on the recital

of the sale deed document thereby holding that the said disputed land's nature to be agricultural and the present respondent is the boundary raiyat of the said land and went on confirming the findings of learned DCLR. He lastly submitted that as the material facts of the present case has not been considered thoroughly by the appellate Court as well as by the original Court of DCLR, these two orders are fit to be set aside.

The learned counsel appearing on behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is legal and valid as such the same is fit to be upheld by this Court also. He further submitted that the petitioner is wrongly claiming that the said disputed land was purchased by him for residential purpose and boundary of the said plot was also wrongly mentioned by the scribe but the fact is that the said land is agricultural in nature and the respondent is the boundary man of the said land and it was on these grounds his pre-emption claim has been allowed by the learned lower Courts. He further submitted that the instant revision petition has been filed on wrong and frivolous ground as such the same is fit to be dismissed. It has also been submitted by the learned counsel that the report of the pleader Commissioner can no way be termed as collusive and incorrect rather the said report was prepared in presence of the petitioner and in the said report it was clearly mentioned that the petitioner has tried to change the nature of land. He lastly submitted that as the impugned order has been passed after considering all the relevant facts of the case and the respondents status of boundary man is an admitted fact, the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter-claim made by the learned counsel for the parties and on perusal of the impugned order, it is seen that although, the learned Addl. Collector, Saran has passed the order after considering the point that the said disputed land has been shown as agricultural and the pre-emptor name has been mentioned in the northern boundary of the vended land, but he missed the important point as to whether, the pre-emptor can claim his pre-emption right on basis of the land which itself is being used by him as homestead land and his big residential house is located in the said plot. It seems to me that this important point should have been considered before arriving at the final finding of fact relating to the disputed question as to whether the vended land should be considered as homestead land or not as the purchaser petitioner has raised the point that the said land was purchased by him for residential purpose. The other important point is about the genuineness of the pleader Commissioner's report. The petitioner is of the view that the said report is collusive and incorrect as in the said report nothing has been mentioned about the nature of land and structures existing thereupon in the southern boundary of the vended plot. Obviously this discrepancies in the pleader Commissioner's report certainly causes doubt regarding the correctness of the said report and in that situation the learned Addl. Collector, should not have taken the same into consideration. This approach of the learned courts below is certainly not a correct approach. In fact, in view of conflicting facts, it is necessary to hold an enquiry to arrive at the correct findings of fact about the disputed claim of parties and the authorities concerned should not have relied upon the report of pleader Commissioner which itself was under doubt.

Thus, for the aforementioned reasons and discussion made hereinabove the impugned orders of learned Addl. Collector, Saran as well as of learned DCLR, Marhaurah are not sustainable and hence the same are set aside and the case is remitted back in the Court of original authority, the learned DCLR, Marhaurah to make an inquiry by himself to ascertain the actual nature of disputed land and also about the nature of other adjoining plots and pass a fresh order after giving sufficient opportunity to the parties to plead their respective case again.

With the aforesaid observations and direction the instant revision application is disposed of.

Dictated and Corrected by me.

21-4-16
Commissioner,
Saran Division, Chapra

21-4-16
Commissioner,
Saran Division, Chapra