

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 152/2013

Mahendra Rai & others

V/s

Radhika Devi

ORDER

03.05.2016. The instant appeal petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (Pre-emption) Appeal no. 02/2011 on 21.03.2013.

The brief facts of the case are that the present respondent no. 1 Radhika Devi W/o Ramesh Rai R/o vill. Jagdishpur P.S. kairah, Distt. Saran purchased plot no. 710 khata no. 47 of mouza Jagdishpur through registered sale deed dt. 04.12.2008 executed by one Yogendra Thakur S/o Mangal Thakur of the same village. Thereafter, Mahendra Rai and his son Krishna Kr. Rai claiming themselves to be the adjoining rayat of the vended plot filed pre-emption case bearing No. L.C. No. 19/2008-09 before DCLR, Chapra Sadar u/s 16(3) of the Bihar Land Reforms (Fixation of ceiling areas and Acquisition of surplus land) Act-1961. The learned DCLR after hearing the parties finally vide order dt. 14.12.2010 rejected the claim of the pre-emption on the ground that the purchaser (respondent) is a landless person and against whom provision of section 16(3) of Land ceiling Act does not apply. Feeling aggrieved by the said order, the present petitioner preferred an appeal case vide Land ceiling (pre-emption) Appeal No. 02/2011 before Addl. Collector, Saran and the said appeal was dismissed vide order dt. 21.3.13 wherein and whereby the order passed by DCLR, Chapra Sadar was confirmed.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Chapra, the petitioners have preferred this revision case before this court.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order passed by Addl. Collector, Saran submitted that the said order is erroneous and illegal for the apparent reasons that the relevant facts of the case has not been considered properly. He further argued that the petitioner being adjoining raiyat whose name finds place in the northern and eastern boundry of the disputed sale deed and it was on these ground the petitioner had claimed pre-emption, but the learned Courts below instead of taking in to account this fact, did not consider the same but infact wrongly held that the respondent purchaser is a land less person and the said land was purchased by her for construction of her house. He further submitted that the said land has been described in the sale deed as irrigated agricultural and not as Dih-basgit and the sale deed does not show that the said land was purchased for residential purpose but despite these facts, the said pre-emption claim was disallowed by the learned lower courts. The learned counsel also submitted that the learned Addl. Collector has wrongly based his findings that the purchaser respondent is a landless person and the said land is of homestead nature whereas the fact is that there is nothing on the record to substantiate his said findings . He lastly said that as

the impugned order is arbitrary, illegal and invalid the same must be set aside and this revision petition be allowed.

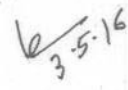
The learned counsel appearing on behalf of the respondent No. 1 opposed the arguments advanced by the land counsel for the petitioner so far his claim that he being the adjoining raiyat of the disputed land, his claim of pre-emption should not have been rejected, and further submitted that the learned DCLR has rightly held that the said disputed land was of dih-basgit nature and the same has been purchased for construction of house and by said findings was based on the report of C.O., Nagra. He further submitted that the learned Addl. Collector has also taken the similar view and by doing so the pre-emption claim of the petitioner has been dismissed. He further submitted that the impugned order is just, proper and valid having no illegality as such the same is fit to be upheld. The learned counsel, lastly submitted that as the respondent is a landless person, the disputed land is of homestead nature then in that conditions, the petitioner cannot claim pre-emption as the said claim is not permissible and valid in the light of observations made by Hon'ble High Court in different cases and in support of his said contention he also referred to some of the reported judgements like: 2008(1) BJLR; 2005(2) BLJR.

Considering the facts and circumstances of the case, material available on records, rival submissions made by the learned counsel for the parties and on perusal of the impugned order it is seen that the claim of the petitioner is solely based on the ground that his name finds place in the boundary of the disputed land in the impugned sale-deed document. However, it is also seen that the present respondent No. 1 resists the said claim of the petitioner that such a small piece of land has been purchased by her for construction of residential house and the nature of land is of homestead and further she being a landless lady the claim of pre-emption is not maintainable. It is seen that the learned courts below have already decided the disputed question of facts of this case as such this court does not find any good ground to make any interference in the said finding of the learned courts below which appears to be in conformity with the observations made by the Hon'ble High Court in similar nature of cases. The learned Addl. Collector, despite being admitting the facts that the petitioner is an adjoining raiyat of the disputed land, his claim of pre-emption cannot be allowed vis-à-vis the claim of the respondent that the said disputed land is of homestead nature and the purchaser is a land less person in the light of the report of C.O., Nagra as well as the observations made by the Hon'ble High Court. In such circumstances this court has no good ground to take a contrary view in the matter for the reason that the learned counsel for the appellatant has miserably failed to contradict the said findings.

Thus, for the aforesaid reasons, impugned order is upheld and accordingly, this revision application is dismissed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra