

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 08/2013

Majid Mian & ors.

Vrs.

Shiv Shanker Ray & ors.

ORDER

06.02.2016 - The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj in Land Ceiling Appeal No. 96/2005-06 on 13.12.2012.

The brief facts of the case are that the disputed piece of land measuring 5 katha, appertaining to khata No. 69, plot No. 237 situated in Mauza Chatu Bathua in the District Gopalganj was transferred through registered sale deed dt. 04.04.1998 by Raghunath Mishra and Baidya Nath Mishra, sons of Late Dev Raj Mishra, R/o Bathua Birsa in favour of Majid Mian, S/o late Noori Mia, R/o Vill-Fulwariya, Dist-Gopalganj. Thereafter, Sheo Shanker Ray, Bashistha Roy, Birendra Roy, all sons of Jadunandan Roy and Awadesh Roy S/o Baidyanath Roy, R/o Vill-Fulwariya, claiming themselves to be the adjoining raiyat of the vended land filed a Land Ceiling case before DCLR, Hathua for claiming pre-emption 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. 05.01.2000 allowed the pre-emption claim in favour of the present respondents holding that the pre-emptors are the adjoining raiyat of the vended land from northern and western side. Feeling aggrieved by the said order, the present petitioner filed an appeal bearing L.C. Appeal No. 96/05-06 in the Court of Collector, Gopalganj which was subsequently transferred in the Court of Addl. Collector, Gopalganj for disposal and the said appeal was dismissed vide order dt. 13.12.2012 wherein the earlier order of the learned DCLR Hathua was upheld and it was further observed that no new fact can be considered at the appellate stage.

On being aggrieved by and dissatisfied with the impugned order passed by the Addl. Collector, Gopalganj, the petitioners have preferred the instant revision before this Court.

Heard the learned counsel for the petitioner only as the learned counsel for the respondent was absent at the time of hearing.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the Addl. Collector has wrongly confirmed the order passed by the DCLR and has not considered the substantive point of law raised on behalf of the appellant regarding the land held by the petitioner appellant. He further submitted in detail as to how and why the said disputed land was transferred by the original purchaser Majid Mian in favour of her wife in lieu of dowry debt through two deeds of registered "Bai Mokasha" on 14.05.1993 and put her in possession. He further submitted that the petitioner, although, raised the points that they were landless person and the disputed land was horticultural in nature, so his pre-emption claim was maintainable but the said claims were not considered inspite of obtaining a report from C.O. Fulwariya wherein it was stated that the petitioner had only 13 katha 6 dhur land which was in their possession. He also argued that the said claim of landless status was rejected on the ground that this point can not be considered at the appellate stage. The learned counsel lastly submitted that as the impugned order of Addl. Collector is full of illegality and as such the same needs to be set aside and this revision case be allowed accordingly.

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The learned counsel appearing on behalf of the respondent was absent on the day of final hearing. However, in the rejoinder filed by him earlier he has appreciated the impugned order stating therein that this revision petition is not maintainable both on facts and in law. He has further written that the disputed R.S. Plot No. 237 originally belonged to Ramdat Rai in R.S. Khatiyan and son of Ramdat Rai, Bacha Rai sold it to respondents by registered sale deed on 02.06.1984 and adjacent plot No. 233 and 238 (which are in north and west boundary respectively of disputed plot No. 237 which also belonged originally to Ramdat Rai) were sold to these respondents and in this way the respondents are the boundary raiyat of the vended land. He further wrote that the disputed plot was of agricultural nature and the learned Addl. Collector had rightly held that the petitioner's claim of landless status can not be considered in appeal. The learned counsel has also pointed out in his rejoinder that after the appellate order when the petitioner refused to transfer the land in favour of the respondent after notice, the said land has been transferred by the DCLR himself on 07.06.2013 through registered deed as till date no certified copy was filed by the petitioner with respect to the revision case, if any, filed by him. He also stated that a suit of title is pending before sub-judge-1 Gopalganj with respect to executed registered deed of Bainama by learned DCLR Court in respect of disputed plot No. 237. The learned counsel lastly prayed that the respondent has well established their case that they are the adjoining raiyat of the vended land by two sides and said findings of Addl. Collector is just and proper having no material irregularities.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that in the instant case, the claim of the petitioner is solely based on the ground that he is a landless person and the said disputed land has been transferred to his wife and the land is of horticultural nature, so no pre-emption claim is maintainable and the learned Addl. Collector, did not consider these points. On the other hand the claim of the respondent is based on the fact that they are the adjacent raiyat of the vended land in northern and southern boundary and they are having their possession. I find that these claims and counter-claims of the parties have already been decided by the Courts below and I do not find any reasonable cause to make any interference in the appellate order which seems to be reasoned. Furthermore, the petitioner has failed to establish his claim of landless status before the appellate Court and this being a revision Court can not go into the merit of such claims. Moreover, it is also seen that the categorical findings of fact by the appellate Court cannot be interfered with in absence of any sufficient reason or ground.

For the aforementioned reasons, the impugned order of Addl. Collector, Gopalganj is upheld and this revision petition being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.

6-2-16
Commissioner,
Saran Division, Chapra

6-2-16
Commissioner,
Saran Division, Chapra