

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 66/2009

Santosh Kumar Singh & Ors.

Vrs.

Devendra Pathak & Ors.

ORDER

22.04.2016 —

The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj in Land Ceiling 16(3) Appeal Case No. 92/2005-06 (Devendra Pathak Vrs. Santosh Singh & Ors.) on 30.05.2009.

The brief facts of the case are that the disputed piece of land appertaining to Khata No. 308, Plot No. 641, area 07 Katha 05 dhur, Plot No. 649, area 01 Katha 02 dhur and of Khata No. 309 Plot No. 242 area 09 Katha situated in Mouza Sohagpur, P.S.- Mirganj, Dist- Gopalganj was transferred by the vendor Bacha Rai S/o Late Khuban Rai through two registered sale deeds executed on 06.03.1993, which was registered on 09.03.1998 in favour of one Devendra Pathak S/o Uma Pati Pathak. Thereafter, one Gulabo Devi W/o Gautam Sing and D/o Mahadeo Rai, R/o Village- Hathua, P.S.- Mirganj, Dist- Gopalganj claiming herself to be the co-sharer and adjoining raiyat of the vended plots filed a pre-emption case vide Land ceiling Case No. 02/1998-99 before DCLR, Hathua. The learned DCLR, Hathua allowed the said pre-emption claim vide his order dated 23.05.2002. Feeling aggrieved by the said order, the present respondent preferred an appeal case before Addl. Collector Gopalganj vide L.C. 16(3) appeal No. 28/2002. Meanwhile, during the pendency of the appeal, the original pre-emptor Gulabo Devi died and her legal representatives were made parties in the case. Thereafter, the learned Addl. Collector after hearing the parties finally vide order dated 30.05.2009 allowed the said appeal in favour of the present respondent. On being aggrieved by and dissatisfied with the aforesaid order of the learned Addl. Collector, the present petitioner have preferred the instant revision petition before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioners at the very outset of his argument submitted that the impugned order is neither sustainable in law nor non facts for the reason that the learned lower court has failed to appreciate the mandatory provision of Land Ceiling Act that no land can be transferred to a person other than a co-sharer and adjoining raiyat. He further submitted in detail as to how and when the said vendor Bacha Rai transferred the said disputed land cunningly to one outsider of the family and managed to mention the boundary of the land sold as given in the R.S. Khatian. He also argued that it would not be out of place to point out that the original pre-emptor Gulabo devi (since deceased) D/o Mahadeo Rai was the sharer of half portion of each plots which have been sold by Bacha Rai in favour of the present respondent. The learned counsel further submitted that it is relevant to mention here that in both the sale deeds in each plot half portion of the plot has been sold and specifically the side of the transferred area has been mentioned in the impugned sale deeds which clearly goes to prove that though the name of the petitioner (pre-emptor) has not been given in the sale deeds but the pre-emptor is held as admitted boundary raiyat as per version of vendor. He further submitted in details as to how only half area of the plots have been transferred from those three plots and the remaining half area of the said plots have been left as the same was in the share of the pre-emptor but in order to defeat the pre-emption right of the petitioners, the vendor deliberately did not mention the name of the pre-emptor in any of the sale deeds rather he mentioned the boundary as of R.S. Khatian. The learned counsel further drew the attention of the court towards the genology of the family in order to prove his contention that the pre-emptor belongs to the same family of the vendor and having their shares as half exists in each and every plot from which the vendor has transferred his own half share only. He further argued that the learned DCLR, after properly appreciating the facts and law had allowed the pre-

emption claim but on the other hand the learned Addl. Collector, without appreciating the facts properly and material available on records reversed the findings of the learned DCLR as such the impugned order of Addl. Collector suffers from the vice of arbitrariness and the same is fit to be set aside. It is also pleaded by the petitioners counsel that the learned lower court should have held that the pre-emptor petitioners are the co-sharer as well as adjoining raiyat of the land sold and they were entitled for claiming pre-emption. He further submitted that as the presumption of jointness is a rule in Hindu family unless the severance is proved through substantial evidence. He lastly submitted that the appeal preferred before learned Addl. Collector by the purchaser respondent should not have been allowed rather the same should have been dismissed.

The learned senior counsel appearing on behalf of the respondent at the very outset of his argument questioned the maintainability of this revision petition in view of the fact that actually the original case before DCLR was dismissed on 08.06.2000 for non-prosecution by the petitioner and subsequently the same was restored after six months without giving any notice to other side and in that situation any order passed behind the back without hearing the other side, the said order becomes invalid and all such order passed subsequently also becomes invalid and in support of his contention he referred to a reported judgment 2010 (4) BLJ page- 223. He further submitted that the petitioners have challenged the impugned order on the ground that the said Bacha Rai had sold his half sharer from the three plots only and the remaining half sharer belong to the petitioner and on that basis they claim their pre-emption right but the fact is that the remaining half portion of the said plots actual fell in the sharer of Anil Rai S/o Bacha Rai after the partition of the property between father and son. The learned counsel further submitted that the share of the petitioner in transferred plots was half can not prove that in actual partition she got half share in each plots rather it so happens that during partition entire plot is allowed to one party and the other entire plot allowed to other party. He further submitted that it was for the petitioners to prove that she was the adjacent raiyat of the vended plots and as she has failed to prove the same, her case was disallowed by the Addl. Collector. He lastly submitted that as the impugned order is just and valid and based on reasoning the same is fit to be upheld and in turn this revision petition must be dismissed for want of any merit.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties, written statements and various rulings filed by them and on perusal of the impugned order, it appears that in the instant case the only important point remains for consideration as to whether the petitioners are really qualify to be considered as co-sharer and adjoining raiyat of the vended land of the plots from which only half portion of its total areas have been transferred to person who is by no way comes under the definition of co-sharer and adjacent raiyat as per the definition of the term enshrined in Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of surplus Land) Act- 1961 or not. The petitioners are of the firm view that after partition in the family they got half share in each and every plot as such their claim of co-sharer and adjoining raiyat can not be disputed. On the other hand, the claim of the respondent is that the petitioners do not have any share in those plots from which half areas have been transferred rather the remaining half fell in the share of the vendors son as the partition, if any, has taken place on plot to plot basis and not each and every plots have been partitioned half and half. Clearly enough, this is a vexed point an which the entire fact of the case depends. It is seen that non of the parties have been able to prove through reliable documents about the mode of partition in the family but one thing is admitted by the parties that the petitioners are the members of the same family. It is seen that the learned DCLR in his order admitted that the pre-emptor petitioner have been able to prove that they are the co-sharer and adjoining raiyat of the vended land and it was on this ground the pre - emption claim was allowed in favour of the petitioner. However, the learned Addl. Collector took an entirely different view in the matter by holding that it is necessary for the party to prove through some documentary evidence that he is the co-sharer and adjoining raiyat of the disputed plots and in case of his failure to do so, his claim of pre-emption can not be allowed and on this premises he held the order of learned DCLR as defective. I do not find any

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justification in the said findings of the learned Addl. Collector in view of the fact that once it is admitted that the pre-emptor comes from the same family then his claim of co-sharer in the family can not be washed of. The question as to whether the person claiming pre-emption is really an adjoining raiyat of the vended land or not can be proved only on the basis some documents if prepared after so called partition. It is seen that the learned DCLR has rightly allowed the pre-emption claim on the ground that the petitioners half share was existing in all the vended plots and, in case, if any share of so called Anil Rai, son of the vendor was there, his name should have been found place in the boundary of the vended plots. Thus, it appears that the learned Addl. Collector has not appreciated the facts properly and logically to arrive at his final findings of fact as such the impugned order is not fit to be upheld.

For the aforesaid reasons, the impugned order is not sustainable and hence the same is set aside.

In the result, this revision petition is allowed.
Dictated and Corrected by me.

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Saran Division, Chapra

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