

**In The Court of Commissioner, Saran Division, Chapra**

**Land Ceiling (pre-emption) Revision No. 136/2012**

**Kedar Yadav**

**Vrs.**

**Bikrama Tiwary & ors.**

**ORDER**

23.09.2015- The instant revision petition is directed against the impugned order passed by Collector, Siwan in pre-emption Appeal Case No. 422/2002 on 02.05.2012.

The brief facts of the case are that the present petitioner Kedar Yadav S/o Late Manharan Yadav R/o Village- Rampur , P.S.- Siswan , Dist- Siwan purchased the disputed piece of land measuring 1 katha, appertaining to khata No. 23, plot No. 174 from Bharat Mallah and chaturgun Mallah, both sons of Late Raghunath Mallah through registered sale deed dated 04.12.2006. Thereafter, the present O.P. No. – 01 Bikarama Tiwary S/o Late Lalan Tiwary, claiming himself to be the adjoining raiyat of the vended land and the purchasers were neither co-sharer nor adjoining raiyat, filed a pre-emption case bearing No. 145/2006-07 u/s 16(3) of BLR Act- 1961 before DCLR, Siwan. The learned DCLR after hearing the case, allowed the pre-emption vide order dated 08.02.2008. This led to filing of an appeal vide pre-emption Appeal Case No. 422/2002 before Collector, Siwan and the said appeal was dismissed vide order dated 02.05.2012. Feeling aggrieved by the order of Collector, Siwan. The present petitioner (purchaser) has preferred this revision application before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order, submitted that the said order is bad in law and not tenable inasmuch as the learned Collector has erred in not considering the point of Landless raised by the petitioner before him by adopting a hyper technical approach. He further argued that the learned Collector ought to have considered the point of the petitioner that he being landless in the interest of substantial justice and the best course available to him was to remand the case back to the DCLR for consideration of this point. He further argued that the report of C.O. clearly establishes the petitioner to be a landless person and in support of that he also relied upon a reported judgement of Hon'ble High Court Patna- 2008 PLJR (4) 178 wherein it has been held that section 16 (3) of BLR Act- 1961 is not applicable against a landless person. He also submitted that the court below have failed to consider that vended land is in village Bhagwanpur and the pre-emptor claims for the adjacency is in another village Rampur. He also argued that the learned courts below failed to consider that the land purchased is only one katha in the road side and the sale deed clearly recites that it is for purpose of constructing house. So the nature of land is clearly residential in nature and in the vicinity there are other constructions and school also exist. He lastly prayed that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the O.P. No. – 01 strongly opposed the arguments forwarded by the learned counsel for the petitioner and

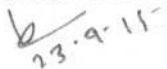


submitted that concurrent findings of both the lower courts can not be reversed at revisional stage and hence this revision petition is not maintainable. He further argued that both the learned lower courts have found that the land in question is agricultural land, the O.P. is the boundary man and the petitioner is neither boundary man nor a privileged person and this court can not interfere now. He also argued that the revisional court has only to look into the legal defects in the order of lower court. He lastly submitted that even in the local inquiry report it has been found that the pre-emptor is in the boundary of vended land and the claim of the purchaser that the nature of land has been changed is totally incorrect, hence, this revision petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is evidently clear as well as an admitted fact that the pre-emptor is the boundary man of the vended land. The only plea taken by the purchaser is that he being a landless person against whom no pre-emption claim is maintainable. However, the said claim of the purchaser is resisted by the pre-emptor on the ground that this point can not be raised at the appellate or revisional stage as the same was not raised before DCLR inasmuch as the revisional court has to look only into the infirmity of the appellate order in the revision. I find some substance in the said submission of the pre-emptor. Furthermore, it is to be noted that the learned Collector after considering all the relevant facts eloquently arrived at his finding and I do not find any good ground to interfere with the said order.

For the aforementioned reasons, the impugned order is upheld and this revision application being devoid of any merit is dismissed.

Dictated and Corrected by me.

  
23.9.15  
Commissioner,  
Saran Division, Chapra

  
23.9.15  
Commissioner,  
Saran Division, Chapra