

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 348/2013

Ash Mohammad Dhuniya

Vrs.

Md. Aalam & Ors.

ORDER

30.07.2016

The instant revision petition is directed against the impugned order passed by District Magistrate, Siwan in Land Ceiling Appeal Case No. 80/2006-07 on 23.07.2013. In fact, the impugned order of D.M., Siwan was challenged earlier before Bihar Land Tribunal, Patna vide B.L.T. Case No. 734/2013 but later on it was permitted to be withdrawn with a liberty to the petitioner for filing Revision Application before the Revisional Authority vide order dated 14.11.2013. This led to filing of the instant revision petition before this court.

The brief facts of the case are that the disputed piece of land measuring 18 dhur and 19 dhurki, appertaining to Khata No. 117, Plot No. 699 was purchased by the present respondent Md. Aalam S/o Late Faridan Mia from one Sheo Pujan Manjhi S/o Late Kari Manjhi through registered sale deed No. 14826 on 17.09.2003. Thereafter, the present petitioner Aash Mohammad Dhuniya S/o Subedar Mia, resident of the same village, claiming himself to be the boundary raiyat from western side of the vended land filed a pre-emption case before DCLR, Siwan Sadar vide Land Ceiling Case No. 98/2003-06 under the provision of section 16(3) of Bihar Land Reforms (Fixation of ceiling areas and Acquisition of Surplus Land) Act- 1961. The learned DCLR after hearing the case and on personally visiting the disputed plot came to the conclusion that the nature of the distributed land has changed into Dih-basgit as large number of residential houses were located in the vicinity of the said land and the pre-emptor, although is a boundary man but can not get the benefit of pre-emption and accordingly he rejected the claim of pre-emption vide order dated 15.02.2007. Feeling aggrieved by the said order, the petitioner preferred an appeal case before D.M., Siwan vide L.C. Appeal Case No. 80/2006-07 and the said appeal was also dismissed by order dated 23.07.2013 wherein it was held that no pre-emption case is maintainable on the land purchased by a landless person.

On being aggrieved by and dissatisfied with the aforesaid order the petitioner first preferred to file a case before Bihar Land Tribunal, Patna vide B.L.T. Case No. 734/2013 but subsequently withdrawn the same obtaining liberty to file a revision case before this court and accordingly the present revision case has been filed.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument assailed the impugned order by saying that the impugned order of the learned D.M., Siwan is illegal and fit to be set aside. He further submitted that the petitioner's name has been given as a boundary man in the western side of the disputed plot in the sale deed document and the nature of land has been shown to be agricultural and these facts clearly show that the petitioner can claim pre-emption. He also argued that the present respondent purchaser is neither a boundary man nor a co-sharer of the vended land and even the nature of land has not changed, but the learned courts below without considering these facts, rejected the claim of pre-emption. The learned counsel further argued that the disputed R.S. Plot No. 699 is contiguous to the Plot No. 700 and the plot No. 700 is standing in the name of the petitioner and the nature of both plots is mentioned in khatiyan as agricultural. He further submitted that the learned DCLR has wrongly held that during inspection of the disputed land he had found that a structure made of Bricks and Asbestos was found over the disputed land but the fact is that the said structure was erected after the filing of pre-emption case before DCLR. He also submitted that the claim of the purchaser that he is a landless person is totally unfounded as the purchaser respondent has more than one acre of land in his own name in Mouza Renua. The learned

counsel at last strongly argued that as the petitioner is in the western boundary of the disputed land and the nature of land described as agricultural in the sale deed document, the petitioner has every right to claim pre-emption but the learned court below wrongly rejected his claim as such the order passed by the learned lower courts are fit to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the petitioner, submitted that the claim of pre-emption of the petitioner has been disallowed by the learned DCLR on the ground that the respondent is a landless person. He further submitted that the learned D.M. also in his detailed order has discussed the legal aspects of case after considering the decision of Hon'ble High Court, Patna and relying upon the spot verification made by DCLR, Siwan who found that the nature of land has changed from Kastkari Land to Dih-basgit, rejected the appeal. He further submitted that the area of disputed land is 18 dhur 19 dhurki only and the said land was purchased at a consideration of Rupees 30 thousand for residential purpose and not for agricultural purpose and in some of the adjacent plots residential houses of several persons like Adalat Manjhi, Suresh Manjhi, Chandrika Manjhi and Sheo pujan Manjhi exist and the respondent also after purchasing the land constructed a house and resides with his family members and a road also runs just east of plot No. 699. He also argued that the respondent being a landless person and the disputed plot is a small plot. Under such circumstances the provision of section 16 (3) will not apply and in this connection he referred to various reported judgments of the Hon'ble High Court in order to substantiate his view that pre-emption claim is not maintainable on tiny plot and against a landless person. The learned counsel lastly said that as the learned lower courts have already decided the case, this court has no scope left to make any interference with the conclusive findings as such the instant revision case is fit to be set aside.

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 of the learned court below, it is quite obvious that the area of the disputed plot is very small, less than one katha. It is also an admitted fact by the parties that the petitioner is the adjoining raiyat of the vended land by virtue of the land existing in his own name in the western side and the nature of land shown to be agricultural in the sale deed document. However, these two points became insignificant and lost its force vis-à-vis the claim of the respondent that the nature of the said disputed land has changed into Dih-basgit and the purchaser is a landless person and if the purchaser qualifies to be a landless person and the nature of land is found to be Dih-basgit in the report of advocate commissioner in that situation the pre-emption claim becomes unfounded as observed by the Hon'ble High Court in a series of judgment as referred to by the learned counsel for the respondent and the copies of which have been filed along with the written statement. It is also seen from the impugned order that learned D.M., Siwan that he has discussed each and every aspects of the case at length before arriving at the final findings of facts relating to claim of the respondent. I do not find any good ground to make any interference in the said impugned order. Moreover, the learned counsel for the petitioner also failed miserably to point out any specific illegality or infirmity in the said findings of learned D.M., Siwan so as to warrant any interference by the revisional court.

For the aforementioned reasons and discussion made as above, I do not find any reason to take a different view other than the concurrent findings of the learned court below. As such the impugned order of D.M., Siwan is upheld and this revision petition being devoid any merit is dismissed accordingly.

Dictated and Corrected by me.

30.1.16
Commissioner,
Saran Division, Chapra

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