

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 21/2014

Lal Babu Pandey

Vrs.

Daroga Pandey & Ors.

ORDER

22.02.2016 - The instant revision application is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal Case No. 08/2008 on 20.12.2013.

The brief facts of the case are that the disputed piece of Land measuring 0.2 decimal (11dhur), appertaining to Khata No. 64, Plot No. 446 situated in mouza Khalgaon of the District Gopalganj was transferred through registered sale deed on 12.10.2006 to one Daroga Pandey S/o Late Brahma Pandey R/o Village- Khalgaon, P.S.- Gopalganj, Dist- Gopalganj by Akhileshwar Pandey and Jai Prakash Pandey, both sons of Late Bisheshwar Pandey and their mother (Respondents Nos. 2-4). Thereafter, the present Petitioner Lal Babu Pandey S/o Late Jwala Pandey R/o the same village, claiming himself to be the co-sharer and adjoining raiyat of the vended land filed a pre-emption case bearing Land Ceiling 16 (3) Case No. 21/2006-07 before DCLR, Gopalganj under the provision of the Bihar Land Reforms (Fixation of ceiling Areas and Acquisition of Surplus Land) Act- 1961. Then the learned DCLR, after issuing notice to the parties heard the case and finally vide order dated 01.02.2008 allowed the said pre-emption claim in favour of the present petitioner holding that the said disputed land was not of homestead nature and the purchaser was also not a land less person. Feeling aggrieved by the said order of the DCLR, the present respondent No. 1 filed an appeal case before Collector, Gopalganj vide Land Ceiling 16 (3) Appeal Case No. 08/2008 and the said appeal was allowed in favour of the present respondent No. 1 vide order dated 20.12.2013.

On being aggrieved by and dissatisfied with the aforesaid order of the Collector, Gopalganj, the present petitioner has preferred the instant revision application before this court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner, at the very outset of his argument, assailed the impugned order by saying that the same is bad in law and against facts on record inasmuch as the findings of the learned lower court are mostly based on conjectures and surmises than on reasonings. He further stated that the impugned order is not a speaking order rather a cryptic one and is liable to be set aside. He further submitted that the nature of the land as recorded in R.S. Khatiyani as "Bhit" but in due course of time the nature of land has been changed into agricultural and various crops used to be grown in the said land. He also argued that the purchaser respondent No. 1 is neither a co-sharer nor an adjoining raiyat of the land whereas the petitioner is an adjoining raiyat of the northern side of the vended land and furthermore, the nature of land has been wrongly shown to be "Awasiya" in the recital of the sale deed dated 12.10.2006. He further argued that the learned lower court has wrongly held the respondent No. 1 as a landless person but the fact is that the respondent No. 1 is not a landless person and the same is clear from the report of C.O. Kuchaikot submitted to the DCLR wherein it has been reported that a total of 4 bigha 15 Katha and 17 dhur land stands in the name of respondent No. 1. He also submitted that the respondent in order to change the nature of land tried to put a palani over the said disputed land and when the matter was brought in the notice of DCLR, he himself made an inquiry on 12.07.2007 and found that in the northern side, the land of present petitioner was found in which Rice crops were found grown. He also submitted that the learned lower court has erred in misconstruing and misinterpreting the inspection report of the learned DCLR that the structures and materials which are found to be at the spot are old one but ought to have held that the material are new one and the same has been brought recently for changing the nature of land. He lastly submitted that since the petitioner is in the boundary of the vended land, he was every reason to claim pre-emption and his said right can not be snatched on dubious grounds as such the impugned order of Collector which is highly unreasoned and arbitrary, is fit to be set aside.

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The learned counsel appearing on behalf of the respondent No. 1 while refuting the averments raised by the learned counsel for the petitioner submitted that this revision petition itself is neither maintainable in law nor on facts inasmuch as completely false, concocted, illegal and baseless grounds have been set forth. He further argued that the impugned order of the learned Collector, Gopalganj is legal and valid as per provisions of law. He further submitted that the said disputed land was purchased by the respondent No. 1 for constructing palani, Nad, Khuta and Dalan and Baithaka for the male person of the family and the said land is just in the vicinity of the house of the respondent No. 1. The learned counsel further argued that the pre-emption petition of the petitioner was wrongly allowed by the DCLR but the learned Collector after considering all aspects of the case held that the land in question is residential having its small area of 2 decimal and the respondent is a landless person against whom no pre-emption claim is maintainable. He further submitted that the impugned order of Collector has been challenged mainly on three grounds like: the disputed land is of agricultural nature, the respondent is not a landless person and the pre-emptor is co-sharer and boundary man of the vended land. The learned counsel further submitted at length to contradict the said points and also referred to various reported judgments in support of his contention and also drew the attention towards the geneology of the respondent No. 1 to substantiate his claim. He lastly submitted that the learned Collector, Gopalganj has passed a detailed order and the same does not suffer from any illegality or arbitrariness as such this revision petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on record, pleadings advanced by the learned counsel for the parties, and on perusal of the impugned order it appears that the main controversy of this case is to decide as to whether the disputed piece of land is to be held as a homestead land and the second point, a bit less significant, to be decided as to whether the purchaser (Respondent No. 1) really can be considered as a landless person or not. Although, these two points have been considered by the appellate court but it appears that the same has not been considered appropriately. In fact these two points should have been considered thoroughly on the basis of facts of the case rather than on surmises and conjectures. The claim of the petitioner is that he is the adjoining raiyat of the vended land as the land in his own name exists in the northern boundary as mentioned in the sale deed and the nature of land was found to be agricultural in the local inspection by DCLR. Obviously these two points are strong evidence in support of the claim of pre-emption. However, the claim of the respondent is that the disputed land was purchased by him for construction work and he being a landless person pre-emption claim over such a small piece of land is not maintainable. I do not find any force in such claim when the pre-emptor himself qualifies for claiming pre-emption on the basis of adjacent raiyat. The claim of respondent could have some significance had he been able to prove his claim of landless status. The claim of landless becomes nullified vis-à-vis the report of C.O. Kuchaikot who reported that 4 bigha, 15 Katha and 17 dhur land stated to be in his possession. The second important point raised by the respondent is that the said disputed land was not an agricultural land rather the same was described as "Awasiya" in the sale deed document and as such no pre-emption claim can be allowed for a land which has been purchased for the purpose of construction. I do not find any substantial merit in such claim in view of the fact that merely giving a description on choice about the nature of land at the time of execution of sale deed, the same can not be held to be correct so long the same is not proved so, in case of dispute over its nature, in local inspection. The learned DCLR in his local inspection report noted that rice crops were found grown on the land in immediate north of the disputed land which is sufficient to show about the correct nature of land. Thus, it appears that the learned Collector has not taken into account each and every aspects of the case in its proper perspective while arriving at the final findings of facts rather it appears that he simply relied upon the pleadings advanced before him.

For the aforementioned 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.

Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra