

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling Revision No. 01/2009

Suresh Chandra Barnawal,

Vrs.

Lakho Devi & ors.

ORDER

03-10-2015— The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj in Land Ceiling 16(3) appeal case No. 11/2005-06 on 16.12.2008.

The brief facts of the case are that the disputed piece of land measuring 14 dhur appertaining to khata No. 22, plot No. 205 situated in Mouza Pandit Jigna was transferred to Raghupat Prasad Barnawal by one Gorakh Chodhary through two sale deeds executed on 14.05.1993 for a consideration of Rs. 12,000 and registered on 15.05.96. Thereafter, one Jangali Prasad Barnawal filed a pre-emption case vide L.C. case No. 15/96-97, claiming himself to be the boundary raiyat of the vended land, before DCLR, Hathua. However, during pendency of the said case, the pre-emptor died which led to substitution of his son Suresh Chandra Barnawal in the case. Thereafter, in the meantime the original purchaser of the disputed land transferred the said land to one Lakho Devi W/o Raghunath Prasad Barnawal through registered deed. The learned DCLR hearing the necessary parties in the case allowed the pre-emption in favour of the present petitioner vide order dt. 22.06.2003. Feeling aggrieved by the said order, the present respondent preferred an appeal before Addl. Collector, Gopalganj who by order dt. 16.12.2008 reversed the finding of the learned DCLR and allowed the appeal in favour of the present respondents. On being aggrieved by and dissatisfied with the aforesaid order, the present petitioner heirs preferred this revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner assailed the impugned order by saying that the same is bad in law and facts both. He further argued that the learned lower Court ought to have held that the petitioner is a bona-fide boundary man as per the sale deed. He also submitted that the learned Court below has not considered that during pendency of the case in the DCLR's Court the disputed land has been transferred by present o.p. No. 2 to o.p. No. 1 for illegal benefit who is his own brother's wife and living in the same house and as this is hit by doctrine of lis pendency. He also submitted that the learned Court has not considered even the report of C.O. Bhore who reported after personal inspection that the disputed land is agricultural land. He further submitted that the learned Addl. Collector has not considered that o.p. No. 1 is not a landless lady rather o.p. No. 1 has enough land for agricultural purpose and also another residential house. He lastly prayed that the impugned order is illegal and liable to be set aside.

The learned counsel appearing on behalf of the o.p. No. 1 strongly opposed the arguments forward by the learned counsel for the petitioner and submitted that the o.p. No. 1 after purchasing the same disputed land constructed structure for habitation purpose and in the local inquiry it was also found that a structure exists over the disputed land in which she lives with her family members. He further argued that the important question is to decide now as to whether o.p. No. 1 is a 'landless lady or not and in this connection he submitted that the learned Addl. Collector's order dt. 16.12.2008 clearly shows that o.p. No. 1 is a landless lady and in order to disprove the said contention of o.p. No. 1 no positive document has been filed by the petitioner as to prove that the o.p. No. 1 is not a landless lady or having other lands also in her possession. He further argued that the findings arrived at by the learned Addl. Collector is legal and valid and since the same has not been falsified by the petitioner, the impugned order is fit to be upheld and this revision petition is liable to be rejected.

Considering the fact and circumstances of the case, material available on records, rival submissions made by the learned counsel for the parties, and on perusal of the written statements as well as impugned order, it is quite obvious that the disputed piece of land measures only 14 dhur and such a small piece of land obviously can not be used for agricultural purpose. It is true that the petitioner is the boundary raiyat of the vended land and it was on this ground alone his claim of pre-emption was allowed by the learned DCLR. However, the learned Addl. Collector reversed the order of DCLR on the ground that over such a small piece of land pre-emption can not be maintainable when the purchaser also happens to be landless lady and in support of his said findings he relied upon the various rulings and observations made by the Hon'ble High Court. Here the learned counsel for the petitioner asserts that as the petitioner is the boundary man and the nature of land is agricultural he has every right to claim pre-emption and in support of that he also referred to some of the reported judgments like; CWJC No. 2406/1989-2009(3)PLJR, CWJC NO. 15421/2005 2006(4) PLJR. I find some substance in the said contention of the petitioner. Although o.p. No. 1 claims to be a landless lady and she purchased the said land for construction of her house as claimed by her but her said claim becomes doubtful in view of the fact that these claims have not been proved conclusively before the lower Court. The learned Addl. Collector simply relied on the disputed fact that the o.p. No. 1 is a landless lady completely ignoring the admitted fact that the petitioner is the boundary man of the disputed land. Thus, I find that the fact relating to landless status of o.p. No. 1 and nature of land needs to be verified thoroughly for arriving at a conclusive finding of facts and for this it becomes necessary to remit the case back to the Addl. Collector for making a personal inquiry regarding the nature of land existing as on the day of purchase and finally after the hearing the parties dispose of the case in accordance with law.

Accordingly this revision petition is disposed of.

Dictated and Corrected by me.

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3.10.15
Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra