

**In The Court of Commissioner, Saran Division, Chapra
Land Ceiling Revision No. 33/2013**

**Mohan Manjhi
Vrs.
Shambhu Yadav & Ors.**

ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (Pre-emption) Appeal No. 04/2012 on 16.01.2013. The brief facts of the case are that the disputed piece of land measuring 1 Katha, appertaining to Khata No. 25 survey plot No. 1205, situated in Village- Rasulpur, P.S.- Khaira, Dist- Saran was purchased by the present respondent Shambhu Yadav through registered sale deed on 02.07.2011 from one Ramjit Singh of the same village. Thereafter, the present petitioner claiming himself to be the adjoining raiyat of the vended land filed a land ceiling case before DCLR, Chapra Sadar vide L.C. Case No. 11/2011 which was disallowed vide order dated 28.12.2011. This led to filing of appeal before the Addl. Collector, Saran vide L.C. (pre-emption) Appeal No. – 04/2012 and the learned Addl. Collector, upheld the findings of DCLR, Chapra Sadar and rejected the appeal by order dated 16.01.2013. On being aggrieved by and dissatisfied with the aforesaid order, the petitioner has preferred this revision case before this court.

Heard the learned counsel for the parties and also perused the written statement filed by them.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order, submitted that the order passed, by Addl. Collector is bad in law and against evidence on the record. He further argued that the court below ought to have considered that name of pre-emptor, Mohan Manjhi, finds place in northern and western boundary of the vended land but this important fact was not considered at all by the learned Addl. Collector and instead he held the purchaser to be a landless person without asking for the production of Landless certificate from the respondent. The learned counsel further argued that although, he filed a petition in the court of Addl. Collector, to call for a report from C.O. in respect of land possessed by the purchaser, but no order was passed in the matter. The learned counsel lastly submitted that the order of lower court are against justice and good conscience and liable to be set aside as the pre-emption law is for consolidate holding and check fragmentation of holding for better cultivation so the impugned order be set aside and this revision be allowed.

The learned counsel appearing on behalf of the O.Ps, on the other hand, submitted that the respondent purchased a small piece of land measuring one Katha for construction of house as he is a Landless person and even in the recital of the sale deed the nature of land has been described as homestead. He further submitted that section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act- 1961 has got no application in case of Dih-basgit, small piece of land and also where the purchaser himself is a Landless person. The learned counsel also filed copies of some reported judgments alongwith his written statements to substantiate his views that pre-emption application is not maintainable against Landless person (CWJC No. 4207/2001, CWJC No. 3732/1983, LPA- 8C/1996, CWJC No. 9502/1989). The learned counsel lastly said that as the petitioner has failed to show any legal error in the order of the lower Court, this revision is fit to be dismissed.

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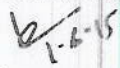
Considering the facts and circumstances of the case, material on records, respective arguments advanced by the learned counsels for the parties and after going through their written statements, it is clear that the disputed piece of land measures only one Khata. The pre-emptor claims his pre-emption right on the basis of he being adjoining raiyat of the vended land whereas the purchaser's claim is based on the fact that he is a Landless person and the disputed piece of land was purchased by him for construction of house and the same intention also reflects in the recital of the sale deed, so the relevant section 16(3) would not apply here. He also placed utmost reliance on some of the reported judgements of Hon'ble High Court wherein it has been held that pre-emption application is not maintainable against Landless person and for Dih-basgit land. It is seen that the learned Addl. Collector, has considered each and every aspect of case while arriving at the findings of fact. The learned counsel for petitioner also failed to point out any apparent infirmity in the impugned order of learned Addl. Collector so as to warrant any interference. The only claim of the petitioner is that purchaser is not a Landless person. But onus also lies on the petitioner himself to prove this through documentary evidence that purchaser does not qualify as a Landless person. The learned Addl. Collector also held that mere on the basis of affidavit this claim can not have any significance. The order of the learned Addl. Collector reads thus "प्रश्नगत विक्रय पत्र के अनुसार अपीलार्थी मोहन गौड़ी प्रश्नगत भूमि के चौहदीदार है। परन्तु विक्रय पत्र के Recital के अनुसार प्रश्नगत भूमि आवासीय है, इसलिए AIR 1996, Patna, page 145 एवं PLJR 2008 (3), page 373 में उद्धृत न्याय निर्णय के आलोक में इस पर अग्र क्रय अधिकार का स्वीकार नहीं होगा।

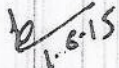
इस प्रकार उपर्युक्त तथ्यों के विश्लेषण से इस निष्कर्ष पर पहुँचता हूँ कि निम्न न्यायालय द्वारा पारित आदेश कानूनतः सही है। इसलिए इसमें हस्तक्षेप की आवश्यकता प्रतीत नहीं होती है।

अतः विज्ञ भूमि सुधार उप समिति सदर अपरा के द्वारा भू हदबंदी याद संख्या 11/2011-12 में दिनांक 28.12.2011 को पारित आदेश को संपुष्ट किया जाता है तथा इस अपीलवाद को खारिज किया जाता है।"

Thus, for the aforesaid reasons, the impugned order is upheld and accordingly this revision being devoid of any merit is dismissed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra