

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 223/2008

**Meena Tiwary
Vrs.
Shampu Tiwary & ors.**

ORDER

30.07.2016 - The instant revision application was originally filed before the Board of Revenue, Bihar, Patna but later on this case was transferred in the Court of Divisional Commissioner, Saran Division, Chapra for disposal in compliance to the order of Hon'ble High Court passed in CWJC No. 1986/2007 on 03.04.2007.

This revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 11/2002 (Damodar Tiwary Vrs Meena Devi & Ors.) on 31.08.2006.

The brief facts of the case are that the present respondent No. 1 Meena Tiwary W/o Sanjay Kumar Tiwary R/o Village- Haraji, P.S.- Dighwara, Dist- Saran at present village- Pratappur, P.S.- Dariyapur, Dist- Saran purchased the disputed land measuring 16 dhur 2^{1/2} dhurki of plot No. 1622, Khata No. 401 situated in Mouza Pratappur through registered sale deed from one Chaturbhuj Narain Tiwary of the same village on 16.05.2001. Thereafter, one Damodar Tiwary S/o Late Ram Agya Tiwary, resident of the same village, claiming himself to be the co-sharer and adjoining raiyat of the vended land, filed a pre-emption case vide Land Ceiling Case No. 07/2001-02 before DCLR, Sonapur but the learned DCLR vide order dated 09.02.2002 rejected the claim of pre-emption on the ground that the nature of the disputed land was homestead and the same was mentioned so in the sale-deed document. Feeling aggrieved by the said order, an appeal case vide L.C. Appeal No. 11/2002 was filed in the court of Addl. Collector, Saran by the pre-emptor, Damodar Tiwary and the said appeal was allowed vide order dated 31.08.2006 and the earlier order of DCLR, Sonapur was set aside mainly on the ground that the said order was passed by totally overlooking the contents of the sale deed.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran the present petitioner has preferred the instant revision case before the Revenue Board, Bihar wherein the original pre-emptor, Damodar Tiwary was impleaded as O.P. No. 1 but the said revision case has been subsequently transferred to this court and during the pendency of this revision case before this court, the original pre-emptor Damodar Tiwary died which led to substitution of the names of his legal heirs as o.ps in the present case.

Heard the learned counsel for the petitioner only as the learned counsel for the respondents was absent on three successive dates in past and also remained absent on the day of final hearing despite being given last chance on previous date.

The learned counsel appearing on behalf of the petitioner, at the very outset of his argument, submitted that the impugned order is bad in law and erroneous on fact for the reason that pre-emption petition itself was not maintainable as the nature of the disputed land is a homestead land. He further submitted that the present respondent (pre-emptor) do not qualify to be considered as adjoining raiyat of the disputed land as no land adjacent to the disputed land exists in his own name rather Jagi Tiwary, Ram Dahin Tiwary and Ram Aashray Tiwary who happens to be the grand son of Jagi Tiwary mentioned in record and even no evidence of any partition was placed before the court. He further submitted that the learned appellate court failed to look into the report of Advocate Commissioner which says that there are residential pucca houses in the vicinity and the nature of land is not agricultural. He argued that the learned appellate court failed to visualise the recital of the sale deed as the said land has been purchased for construction of house and its small area i.e. 16 dhurs 2^{1/2} dhurki also proves the same and even the said land is no longer agricultural in nature. He lastly submitted that even the pre-emptor respondents failed to produce any document to prove otherwise that the said disputed land is of agricultural nature and as such the illegal findings of learned

appellate court about the nature of land is fit to be rejected and this revision petition be allowed.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the petitioner and on perusal of the impugned order, it is seen that in the instant case dispute between the parties relates to a piece of land measuring only 16 dhur 2^{1/2} dhurki. The claim of the petitioner is that the said land was purchased by her for construction of her residential house and the said intention was also mentioned in the recital of sale deed document and the nature of land was also found to be homestead by the pleader commissioner in local inspection. On the other hand, the case of the respondent is that they being the adjoining raiyat of the vended land, they can claim pre-emption and their said claim has been rightly allowed by the Addl. Collector. However, on correct appreciation of the entire facts of the case it is quite obvious that certainly such a small piece of land can not be used for agricultural purpose and in that situation if pre-emption is allowed on such a small piece of land, the purchaser petitioner's interest must be jeopardized who had purchased the said small piece of land for construction of her dwelling house and her such intention reflects in the recital of the sale deed also. Under such circumstances the learned Addl. Collector should not have reversed the findings of the learned DCLR. Thus, it appears that the learned Addl. Collector has failed to consider the every aspects of the case in its true perspective while arriving at his final findings of facts with respect to the claim of the parties.

For the aforementioned reasons, the impugned order is not sustainable, hence the same is set aside.

In the result, this revision petition is allowed.

Dictated and Corrected by me.

30-1-16
Commissioner,
Saran Division, Chapra

30-1-16
Commissioner,
Saran Division, Chapra