

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 91/2013

Sahid Mian & Ors. Vrs. Dularpati Devi & Ors.

2. Land Ceiling Rev. No. 92/2013

Sahid Mian Vrs. Chinta Haran Rai & Ors.

3. Land Ceiling (Pre-Emptio0 Rev. No. 93/2013

Sahid Mian Vrs. Budhdeo Rai & Ors.

ORDER

30.07.2016 - All the above mentioned revision applications are directed against the common order passed by Collector, Gopalganj on 07.12.2012 in three separate Land Ceiling Appeal Cases bearing Nos. 24/2007, 25/2007 and 26/2007 and in all these appeal cases, the appellant is the same whereas the respondents are different persons.

Since the facts and issue involved in all the three revision petitions are the same, these revision cases are being heard together and are being disposed of by a common order on the consent of the learned counsel for the contesting parties.

The brief facts of the case are that three separate pre-emption case were filed in the court of DCLR, Gopalganj vide Land Ceiling 16(3) case No. 16/2003-04, 17/2003-04 under the relevant provision of Bihar Land Reforms (Fixation of ceiling Areas and Acquisition of Surplus Land) Act- 1961. In the said case the disputed piece of land situated in Mouza Mishrain chak, P.S& Dist.- Gopalganj under Khata No. 17, Plot No. 222 having areas 02 Katha 15 dhur, 05 Katha 01dhur and 02 Katha 15 dhur which were transferred by separate vendors through registered sale deed on different dates. The details of which are as follows.

1. The first sale deed dated 27.06.2003 for 02 Katha, 15 dhur land was executed in favour of Raj Nandan Sah & Raj Kishore Sah by one Smt. Dularpati Devi.
2. The second sale deed dated 04.08.2003 for 02 Katha 15 dhur land was executed by Chinta Haran Rain in favour of Rai Nandan Sah and Raj Kishore Sah.
3. The third sale deed dated 26.08.2003 was executed in favour of Gayatri Devi and Raj Kishore Sah by one Budh deo Rai with respect to 05 katha land.

Thereafter, the present petitioner Sahid Mian S/o Late Ali Sher Mian resident of the same village, claiming himself to be the boundary man of all those land transferred through sale deeds, filed three pre-emption cases against three impugned sale deeds before learned DCLR, Gopalganj and the said cases were subsequently dismissed vide order dated 16.05.2007. Feeling aggrieved by the said order of DCLR, the present appellant preferred three separate appeal petitions before learned Collector, Gopalganj and the said appeals were dismissed vide order dated 07.12.2012, through a common order.

On being aggrieved by and dissatisfied with the aforesaid order, the present petitioner has preferred three separate revision cases before this court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner submitted in details about the entire course of events relating to coming up of these three separate revision cases before this

court though the three appeal petitions were disposed of by a single common order. He further briefly submitted regarding his claim of adjoining raiyat of all the three disputed piece of lands transferred through three separate sale deeds and how the name of the petitioner has been deliberately not mentioned in the different boundaries in the sale deed documents to defeat his pre-emption right. He further submitted with respect to the sale deed dated 27.06.2003, the subject matter of dispute in revision No. 91/2013, that the purchaser O.P. has given wrong boundary of south and west of the disputed land in the sale deed document. The land of southern boundary belongs to Gendalal which was taken through registered exchange deed dated 29.05.1998 by the petitioner Sahid Mian but he purchaser instead of giving the name of petitioner in southern boundary, the name of his nephew Md. Hussain was given and similarly in western boundary the name of Budh deo Rai was given, although, Budh deo Rai transferred his land in favour of the petitioner through sale deed on 17.12.2002 and the learned counsel also filed the copies of those relevant documents in support and strongly pleaded that this clearly shows that the petitioner is the boundary man and the o.p. purchaser is not the boundary man of the disputed land. The learned counsel also argued that for the other two sale deeds, which are the subject matter of dispute in other two revision case, the same modus-operandi has been adopted by the o.p. purchasers to defeat the pre-emption right of the petitioner. He further argued that the nature of land given in the sale deed document is "Sinchit" meaning thereby that the said land is agricultural in nature but there is nothing on the record to show that the nature of land has been changed into homestead. He also argued that the respondents had raised the claim of landless person before the learned courts below in their support but it is important to note that there is no document and report of any revenue authorities available on the records to substantiate the said claim. He also submitted that the Hon'ble High Court has also held that for deciding the nature of land and landless status there must be report about this and in support of this contention and for other views taken above, he also referred to some of the reported judgments of Hon'ble High Court viz 1998 (3) PLJR page – 337, 2004(2) PLJR, Page No. 339. The learned counsel lastly submitted that the learned DCLR and the learned Collector, Gopalganj committed error in dismissing the claim of the petitioner for pre-emption, on the basis erroneous consideration as such the impugned orders are fit to be set aside and these revision petitions are fit to be allowed.

The learned senior counsel appearing on behalf of the respondents in all the three revision cases while strongly opposing the claim of the learned counsel for the petitioner with respect to his being the adjoining raiyat of the vended land, he submitted that the petitioner is not the boundary man of the disputed land as his name does not appear in any boundary of the disputed land in any of the sale deed documents. He also submitted that the nature of land has been changed into homestead and the said fact was admitted by the petitioner himself in the sale deed document dated 17.12.2002 while purchasing some land from R.S. plot No. 222 where it was mentioned that the said land as homestead in the recital of the sale deeds. He further argued that the O.Ps. in all the three revision cases, are landless persons having less than one acre of land in their possession and in that situation no-pre-emption case is maintainable against a land less person. The learned counsel lastly submitted that the petitioner is not the boundary man of any disputed land as mentioned in three sale deeds, the land being homestead and the purchasers are landless person, the claim of pre-emption can not be allowed and in such circumstances the learned lower courts, below have rightly rejected the pre-emption claim of the pre-emptor petitioner. The learned counsel also filed the copies of reported Judgments of the Hon'ble High Court, in support of his above contentions – 2005(2) PLJR page-24-43.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the contesting parties, written statements and copies of judgments referred to in support of the contentions and on perusal of the impugned order, it is seen that in all these three revision cases there involve some common issues like: as to whether, the petitioner pre-emptor is really a boundary man of the vended plots, whether the nature of land has been changed into homestead land from agricultural land and whether the respondent purchasers come under the purview of a landless person or not. The petitioner's claim of adjoining raiyat of the disputed plots is based on the ground that from disputed plot No. 222 he had purchased 4 katha land towards western side by sale deed on 17.12.2002 from Budhdeo Rai as such he became the adjoining raiyat of the disputed land much before the disputed sale deed was executed in favour of the other person. Similarly it has been claimed that he also purchased 05 Katha land from Khesra No. 221 which

is in southern side of plot No. 222 on 29.05.1998 thus his claim that his being the adjoining raiyat of the vended land can not be overlooked. The respondents resist the said claim of the petitioners on the ground that the name of the petitioner has not been mentioned in any of the sale deed document. This averment seems to be correct to some extent but the same can no way be a conclusive evidence to hold that the petitioner can not claim pre-emption. In fact, the pre-emption right being a statutory right, the enforcement of such right must be done by appreciating the facts properly and justifiably. The petitioners claiming from the very beginning that his name has not been shown by the purchasers in the boundary of the vended land in the sale deeds just for the purpose to defeat his pre-emption claim. I find some substance in the said claim of the petitioner and also found that his said claim has not been examined thoroughly by the learned courts below. It appears that the learned courts below have placed heavy reliance on the alleged sale deed documents, the very correctness of the same is under dispute. Apart from that it is also a fact that the purchasers themselves are neither co-sharer nor adjoining raiyat of the vended plots from the beginning rather they are strangers, while on the other hand, it appears that the petitioner's claim of boundary man seems to be correct as he had purchased some land in the said plot in the past and also exchanged some part of land from plot No. 221, an adjoining plot of plot No. 222, from another raiyat in the past. Thus, it is seen that at least this vital fact should have been examined properly by the learned courts below before arriving at the final findings of fact with respect to the claim of the petitioner that he qualifies to be considered as the adjoining raiyat of the vended plots. The other two points like claim of the respondents is that they are landless person and the disputed plots are of homestead nature so the claim of pre-emption is not maintainable. I do not find much substance in the said claim in absence of substantial documentary evidence on record. It is needless to say that the learned courts below have taken a casual and lackadaisical approach while deciding the pre-emption claim of the petitioner and consequently arrived at an erroneous findings of facts that the petitioner does not qualify to be considered as a boundary man of the vended land and holding that the purchasers respondents are the landless person and the nature of land was found to be homestead.

Thus, for the aforementioned reasons and discussion made therein, I am not constrained to uphold the impugned orders of learned courts below and accordingly the same are set aside.

In the result, these revision applications are allowed.

Dictated and Corrected by me.

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