

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 200/2014

Paras Rai
Vrs.
Biyafi Devi
ORDER

31.03.2016- The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in L.C. (pre-emption) Appeal No. 28/2013 on 26.06.2014.

The brief facts of the case are that the disputed piece of land measuring altogether 1 katha 8 dhur, spread over in plot No. 451, 453, 452 and appertaining to khata No. 626, 384, 284 respectively was purchased by the present respondent Biyafi Devi w/o Prithivi Mahto R/o Vill-Jalal Basant, P.S.-Garkha, Dist-Saran through registered sale deed on 16.07.2012 from one Pritivi Nath Mishra S/o Late Ram Chandra Mishra of the same village. Thereafter, the present petitioner, Paras Rai S/o Late Munni Lal Rai, claiming himself to be the adjoining raiyat of the transferred land, filed a pre-emption petition before DCLR, Chapra Sadar vide L.C. case No. 24/2012-13. The learned DCLR after hearing the case held that although, the pre-emptor is an adjoining raiyat of the disputed land but the purchaser is a landless lady which is proved from the landless certificate issued by C.O. Garkha as such provision of section 16(3) does not applicable and accordingly he rejected the pre-emption claim of the present petitioner vide order dt. 16.07.2013. This led to filing of an appeal case before Addl. Collector, Saran vide L.C. (Pre-emption) Appeal No. 28/2013 and the said appeal was also disallowed vide order dt. 26.06.2014 on the ground that despite the land being agricultural in nature as per the recital of the sale deed and petitioner is an adjoining raiyat, no pre-emption claim can be allowed as the present respondent purchaser is a landless lady. Feeling aggrieved by the said order, the present petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the said order has been passed without considering the factual aspects of the case in true perspective. He further submitted that the landless certificate issued by C.O. Garkha is a fabricated document and the same could not have been relied upon. The learned counsel further argued that the petitioner is the adjoining raiyat of the vended land as he has also purchased about 6 katha of land from plot No. 451 and 452 in the joint name earlier and as part of the remaining land was sold to other person which led to filing of pre-emption petition before DCLR. He further submitted that the learned DCLR without considering the claim of the petitioner wrongly relied upon the landless certificate issued in favour of the respondent and rejected the pre-emption claim. The learned Addl. Collector also without applying his judicial mind upheld the order of DCLR in a mechanical manner on the same ground by placing utmost reliance on the landless status of the respondent. He lastly submitted that as the petitioner's name has been shown in the boundary of the sale deed and the description of land given in the recital

of the sale deed as irrigated, in that case the petitioner has every right to claim pre-emption and so this revision petition is fit to be allowed.

The learned counsel appearing on behalf of the respondent strongly opposed the submission made by the learned counsel for the petitioner and submitted that the respondent has actually purchased the said disputed land for constructing her house as she had no other land. He further submitted that the nature of land is of homestead nature which was also reported by the pleader Commissioner after spot inspection and the said inspection was carried out in the presence of both parties. He also argued that the respondent is a landless lady and a certificate to that effect was also issued in her favour by the circle officer, Garkha which is also available on the lower Court record, which is sufficient to hold that no pre-emption claim is maintainable against a landless person and in support of the said contention he also referred to a reported judgment 2005(2) PLJR, page-24. He also submitted that the petitioner despite having sufficient occasion to question the correctness of the said landless certificate of the respondent before the lower Courts but he did not avail the opportunity and the said landless status of the respondent is being disputed on the ground that the respondent has also some land from her fathers sides. He lastly submitted that as the learned Courts below has dealt with matter correctly before arriving at the final findings of fact relating to landless status of the respondent the same can not be challenged here again and accordingly, the said impugned order can not be interfered with now.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that the area of the disputed plot is very small and the claim of the purchaser respondent is that the said land was purchased by her for construction of house and besides that the said land is no longer having agricultural nature as has been found so during local inspection and she being landless lady no pre-emption right can be availed. On the other hand the petitioner's (pre-emptor) claim is that he being and adjoining raiyat of the said land and the land being recorded as irrigated land in the sale deed document the same is fit to be considered as agricultural land and on that basis his pre-emption claim is enforceable. Thus, it is seen that the learned Courts below has decided the issue on the ground that as the respondent purchaser is a landless person and since the same is proved on the basis of landless certificate issued by C.O. Garkha, in that situation no pre-emption claim can be allowed as per the ruling relied upon by the learned counsel for the respondent. It is also important to note that the concurrent findings of learned Courts below seems to be appropriate in view of the rulings referred above. The learned counsel for the petitioner has miserably failed to set forth any good ground so as to enable this Court to make any interference in the impugned order of Addl. Collector, Saran.

For the aforementioned reasons and discussion made therein impugned order of Addl. Collector, Saran is upheld.

In the result this revision petition is dismissed.

Dictated and Corrected by me.

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31.3.16
Commissioner,
Saran Division, Chapra

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Saran Division, Chapra