

In The Court of Commissioner, Saran Division, Chapra

**Land Ceiling (Pre-emption) Revision No. 240/2014**

**Tarkeshwar Mishra**

**Vrs.**

**Indu Kunwar & ors.**

**ORDER**

30.07.2014 — The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in L.C. (Pre-emption) Appeal No. 29/2013.

The brief facts of the case are that the disputed piece of land measuring 2 katha 8 ½ dhur, appertaining to khata No. 149, plot No. 876 situated in Mouza Ghoghwalia was transferred by Indu Kunwar W/o late Shailesh Mishra to Binod Mishra S/o Late Suresh Mishra, R/o Vill-Ghoghwalia, P.S.-Kopa, Dist-Saran through registered sale deed on 29.03.2012. Thereafter, the present petitioner Tarkeshwar Mishra, S/o Late Ramayan Mishra R/o of the same village, claiming that the purchaser is neither co-sharer nor adjoining raiyat of the vended land, filed a pre-emption petition vide L.C. case No. 12/2012-13 before DCLR, Chapra Sadar under section 16(3) of Bihar Land Reforms (Fixation of Ceiling areas and acquisition of surplus land) Act-1961. Then the learned DCLR, after issuing notices to the parties, heard the case and finally vide order dt. 07.12.2013 rejected the claim of pre-emption on the ground that the petitioner's land was not existing in the boundary of the vended land and it was also appeared from the advocate Commissioner's report that the nature of disputed land has changed into homestead. Feeling aggrieved by the said order the petitioner filed an appeal before Addl. Collector, Saran who in turn vide order dt. 19.07.2014 upheld the earlier order passed by DCLR, Chapra Sadar holding therein that the disputed land is of homestead nature, purchaser is a landless person and the petitioner is not a boundary raiyat.

On being aggrieved by and dissatisfied by the aforesaid order of the learned Addl. Collector, Saran passed in appeal, the petitioner has preferred the present 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 is illegal, without jurisdiction and against the principle of natural justice and good conscience as much as the learned Court below without perusing the documents available on record wrongly held that the petitioner is not the boundary man of the vended land. He further argued that the learned Court below wrongly believed on the report of Advocate Commissioner which is collusive and the fact is that no construction or dwelling house exist in the boundary or near the transferred land while the land is purely agricultural land. The learned counsel further submitted in details as to how after partition of the whole plot of No. 876, he came to acquire northern half of the said plot by purchase and having his possession and how the vendor transferred the half southern portion by giving the name of Manager Mishra in the northern boundary who is the elder brother of the petitioner. He also submitted that the disputed land is agricultural land and the purchaser is not a landless person because he has purchased a tractor on Bank's loan and has purchased some land also in Chapra Town. He lastly submitted that the learned Addl. Collector, without considering the fact that the petitioner is in the boundary of the disputed land on the basis of the evidence placed

before him by way of rent receipt, dismissed the appeal by holding that the nature of land has been changed into homestead as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that the impugned order is just and proper having no illegality and concurrent findings of facts of Court below is fit to be upheld. He further argued that the petitioner is neither boundary man nor co-sharer of the vended land and even the nature of land has been changed from agricultural to dih-basgit. He also submitted that the respondent purchaser is a landless person and also against whom no pre-emption case is maintainable. The learned counsel further submitted that the claim of the petitioner that he is in the northern boundary of the disputed plot is wrong as in the sale deed, the name of Manager Mishra has been shown and the same has also been found by the Advocate Commissioner during spot inspection and the nature of land described as homestead in the sale deed document. Regarding, the claim of the petitioner that the purchaser is not a landless person, the learned counsel for the respondent submitted that the learned ADM had sought a report from C.O. Jalalpur regarding that and the C.O. in his report clearly stated that the respondent has got only 15 katha 3 dhur of land. The learned counsel lastly submitted that the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective submissions made by the learned counsel of the contesting parties and on perusal of the impugned order, it is seen that the petitioner's claim of pre-emption has been rejected mainly on the ground that the disputed land is of homestead nature, purchaser is the landless person and the petitioner is not a boundary raiyat. I find that although, the petitioner has taken plea to contradict the said findings of the learned Addl. Collector before this Court but the same can not be taken as a conclusive evidence for the lack of substantial documents. In fact it is an admitted fact that the petitioner's name has not been shown in the northern boundary. The second important point relates to nature of the disputed land. The petitioner claims that the same to be agricultural but the said claim is not acceptable in view of the description of land given in the sale deed document and the findings arrived at by the Advocate Commissioner. The third point relating to respondent's status of being a landless person against whom no pre-emption claim is maintainable also seems to be acceptable in view of the report of local C.O. wherein it has been stated that the respondent holds only in his 15 katha 3 dhur of land name. Thus, it appears that the petitioner has failed controvert the findings aggrieved at by the appellate Court through substantial documentary evidence thereby making this Court unable to make any interference in the appellate order which is under challenge.

Thus, for the aforementioned reasons, the impugned order is upheld and accordingly this revision petition is dismissed.

Dictated and Corrected by me.

*30-1-16*  
Commissioner,

Saran Division, Chapra

*30-1-16*  
Commissioner,  
Saran Division, Chapra