

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 155/2014

Bhirgunath Sahani  
Vrs.  
Shiv Kumari Devi & ors.  
ORDER

18.03.2016- The instant revision application is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal No. 20/2011 on 02.04.2014.

The brief facts of the case are that the disputed piece of land measuring 5 katha 10 dhur and 10 dhurki, appertaining to khata No. 59, R.S. plot Nos. 665, 666 situated in Mouza Madhopur of Taraiya circle of Saran district was transferred to one Shiv Kumari Devi W/o Hardeo Sahani and Sona Devi W/o Bhagwan Sahani, R/o Vill-Madhapur Bara, P.S.-Taraiya, Dist-Saran through registered sale deed on 23.12.2009 by one Mukati Nath Prasad of the same village. Thereafter one Bhirgunath Sahani, claiming himself to be the boundary raiyat of the vended land filed a pre-emption case u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus land) Act-1961 before DCLR Marhaurah and the said case was registered as land Ceiling case No. 17/2009-10. The learned DCLR after hearing the parties finally vide order dt. 03.08.2011 allowed the said case in favour of pre-emptor holding that pre-emptor as the adjoining raiyat of the vended land. Thereafter, on being feeling aggrieved by the said order the present respondent (purchaser) filed an appeal case bearing Land Ceiling (pre-emption) Appeal No. 20/2011 before, Addl. Collector, Saran. The learned Addl. Collector, Saran, however, vide his order dt. 02.04.2014 reversed the earlier order of DCLR, Marhaurah holding that the land in question is of homestead nature holding that no pre-emption claim would be maintainable. Feeling aggrieved by preferred this 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 of Addl. Collector, Saran submitted that the said order is illegal and erroneous as the same has been passed without considering the facts of the case. He further argued that the learned Court below ought to have confirmed the order passed by the DCLR and he should not have considered the false, vague and collusive report of the Advocate Commissioner and should not have thrown in wastage, the report of C.O. It is also submitted by the learned counsel that the learned Addl. Collector wrongly considered the disputed land to be homestead land but the fact is that the said land is fertile and irrigated. He further argued that learned lower Court also ignored the petitioner's claim of being co-sharer and adjoining raiyat of the vended land. He also submitted that the learned court below wrongly held that the purchaser's are landless lady because husband and wife is one unit in the Hindu joint family and even in the report of C.O. it was mentioned that she was not a landless lady. The learned counsel also relied upon a reported judgment, (BBCJ-1997 page 396) wherein it has been held that "when a pre-emptor make out a case, the Court has no option but allow the same". He lastly submitted that as the impugned order is devoid of any correct finding of fact, the said order is fit to be dismissed and this revision application deserves to be allowed.

The learned counsel appearing on behalf of the respondent while opposing the arguments advanced by the learned counsel for the parties, on the other hand submitted that the impugned order is just and proper. He further submitted that the respondent No.1 purchased the said disputed land for the purpose of construction of their residential house because of the fact that their

old residential house was situated in flood affected area and in every rainy season their families had to vacate the house due to flood and it was only due to the mistake of scribe, the purpose of purchase of land was not mentioned in the sale deed but later on Nad, Palani, Khuta and one hand pump were put over that. He further argued that the advocate Commissioner also after spot inspection reported that there was half built house with two palani, one nad and the family members reside in the said palani and also some other house besides the house of petitioner was also found nearby during spot visit. He also claimed that purchaser is landless lady. The learned counsel lastly submitted that the as the purchasers qualify to be landless lady and the nature of land has been changed into homestead and considering this fact the learned Addl. Collector has allowed the appeal and as such the said order if fit to be upheld. The learned counsel also filed copies of some reported judgments of Hon'ble High Court in support his claim of landless status of the purchaser and also about the nature of land which has been claimed to have changed its nature from agricultural to homestead.

Considering the facts and circumstance of the case, material available on records, pleadings advanced by learned counsel for the parties in support of their respective claim and on perusal of the impugned order, it is seen that the only question which needs serious consideration as to whether the petitioner is entitled for claiming his pre-emption right by virtue of he being an adjoining raiyat of the disputed land or his said claim becomes nullified due to the claim of the respondents that they are landless and the said disputed land was purchased by them for construction of residential house. I find that it is an admitted fact by the parties that the petitioner is the adjacent raiyat of the said land and virtually there is no dispute over the said claim and it is on that basis his pre-emption claim was allowed by the learned DCLR. But the learned Addl. Collector on the other hand, relied heavily on the claim of the respondents regarding their landless status and about the nature of land. The claim of landless status of the respondent does not seem to be a settled issue in view of the fact that there is no specific report as to what total area of land exists in possession of the respondents. A report merely stating that the respondents are landless lady has no significance at all. The other important point is to find out about the nature of land. Although, no purpose has been explained about the said purchase in the impugned sale deed document but the respondents stand is that the said land was purchased by them for the construction of their houses as such the said land be treated as homestead. I do not find any justification in such claim as well as in the findings of learned Addl. Collector vis-à-vis the description of land and purpose of its purchase given in the recital of the sale deed document. Moreover, it is also almost settled position in law that description of land given in the sale deed document is a strong evidence for deciding the nature of land. Thus, I find that the petitioner has been able to make out a superior claim whereas the respondents could not make their case so strong so far their claim of landless status and homestead nature of land are concerned. It is also to be noted that the learned Addl. Collector, has not appreciated the material facts of the case in its true perspective while arriving at the final findings of fact with respect to landless claim as well as the claim of homestead nature of the disputed plots.

For the aforementioned reasons the impugned order of Addl. Collector, Saran dt. 02.04.2014 is not sustainable and hence the same is set aside.

In the result this revision petition is allowed.

Dictated and corrected by me.

*18.3.16*  
Commissioner

Saran Division, Chapra

*18.3.16*  
Commissioner  
Saran Division, Chapra