

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 235/2014

Manoj Kumar
Vrs.
Sanjeev Kumar & ors.
ORDER

69.02.2016 - The instant revision application is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (pre-emption) Appeal No. 21/2007 on 16.07.2014.

The brief facts of the case are that the disputed piece of land measuring 1 katha 19 dhur, appertaining to khata No. 200, plot No. 172 situated in village Pachpatra, Dist-Saran was transferred by one Smt. Neelam Sinha W/o Bijendra Prasad Singh through registered sale deed executed on 12.06.2007 in favour of Manoj Kumar, S/o Sugendra Naraiyan Singh, R/o Vill-Pachpatra, P.S.-Rivilganj, Dist-Saran. Thereafter, the present respondent claiming himself to be the adjoining raiyat and co-sharer of the vended land filed a case before DCLR, Chapra Sadar u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961 for reconveyance of the said land. Thereafter, the learned DCLR after hearing the parties finally vide order dt. 06.09.07 allowed the pre-emption claim of present respondent. This led to filing of an appeal bearing L.C. Appeal No. 21/2007 by present petitioner before Addl. Collector, Saran which was dismissed vide order dt. 16.07.2014.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the 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 submitted at the very outset of his arguments that the impugned order is illegal as the said order has been passed without appreciating the real question relating to present position of the disputed land. He further submitted that the respondent is neither co-sharer nor boundary man of the vended land but this important fact was not considered by the learned DCLR as well as by Addl. Collector. He further argued that the nature of land has been changed into Dih-basgit land from Agricultural land and a petition filed by the petitioner for appointment of a pleader Commissioner in order to verify as to whether the said land is developed into residential plot or not before the Addl. Collector but the said petition was dismissed and later on this court allowed his said petition vide order dated 31.05.2011. He further stated that it was then the lower court ordered for appointment of pleader Commissioner and the said land was inspected and the report filed shows that the nature of disputed land has been changed into Dih-basgit and house and American grasses were found growing in the said land. He further submitted that the said report of pleader Commissioner was not considered by the court and even the affidavit sworn by Jugal Kishore Singh that northern portion of Plot No. 172 fell in his share after mutual partition amongst his four brothers were not taken into account. The learned counsel further argued that the learned lower court has erred in not believing, appreciating and not discussing the various rulings cited in support of his contention by the petitioner. He also submitted that the learned lower court ought to have allowed the appeal of the petitioner after holding that the nature of land has been changed into Dih-basgit and it is no longer agricultural but instead he relied upon the recital of the sale deed which was described on the basis of khatiyan and even the findings about the nature of land as recorded by the pleader Commissioner has been completely ignored by the Addl. Collector which makes the impugned order illegal and erroneous. He lastly submitted that this revision petition needs to be allowed by setting aside the impugned order.

The learned counsel appearing on behalf of the respondent while vehemently opposing the pleadings made by the learned counsel for the petitioner, submitted that the concurrent findings of learned court below about the nature of land can not be disputed now and the impugned order is a legal and valid order as such the same does not require any interference. He further submitted that the sale deed was executed on 12.06.2007 and the pre-

emption petition was filed by the respondent before DCLR on 18.09.2007 and within three months how can the nature of land be changed into Dih-basgit as claimed by the petitioner which is far beyond truth and can not be believed any way. He further contended that the nature of land shown in the sale deed document as irrigated and even the pleader Commissioner also found American Grasses growing in the said disputed land which clearly shows that the nature of land has not been changed rather it is still agricultural land as such the claim of the petitioner about the nature of land is highly unbelievable. He further submitted that from the memorandum of partition it is also clear that in Plot No. 172, whose total area is 4 Katha 1 dhur in which petitioner's did not have any land whereas the respondent's land is in the northern and southern side of the disputed plot. The learned counsel further submitted that, although, vendor Nelam Sinha had purchased 2 Katha land from one of the co-sharer but she deliberately sold only 1 Katha 19 dhur, keeping 1 dhur with her and all this mischief has been played by the petitioner to defeat the pre-emption right of the respondent. The learned counsel also cited various rulings of Hon'ble High Court in support of his contentions alongwith his written statements. He lastly prayed that this revision petition having no merit is fit to be dismissed.

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 and on perusal of the impugned order, it is seen that the dispute between the parties mainly revolves around two important points. The first point is that as to whether the purchaser petitioner is in the boundary of the disputed land or it is the pre-emptor respondent who is in the boundary of the disputed land. The second important point is to decide about the nature of the disputed land. Although, the petitioner who is the purchaser of the disputed land claims from the very beginning that it is he who is in the boundary of the vended land and the nature of the disputed land has been changed into Dih-basgit land from agricultural land. On the other hand the respondent pre-emptor has resisted the said claim of the petitioner only on the ground of pleader Commissioner's report and the learned Courts below without appreciating the whole facts thoroughly or keeping in mind the nature of land shown in the recital of sale deed document and appreciating the various rulings cited by the contesting parties in for and against of their contention finally arrived at the finding of fact that the petitioner did not qualify to be considered as a boundary raiyat of the dispute land. Obviously the findings of the Courts below is not substantial in view of the rulings cited in support of his claim by the petitioner. Moreover, it is an admitted facts by the parties that the northern part of R.S. plot No. 172 fell in the share of Jugal Kishor Singh after family partition amongst the brother. I find that this is a strong evidence in favour of the petitioner regarding his claim of adjoining raiyat of the vended land. At least the lower Court should have considered this point appropriately in the light of the provision of section 16(3) of the land Ceiling Act which clearly says that "*(1) when any transfer of land is made after the commencement of the act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transfer or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration ----- for the transfer of the land to him on the terms and conditions contained in the said deed.*" Thus it is seen that as the purchaser himself holds land in the boundary in that condition pre-emption could not have been allowed. The second point that the nature of land has been changed into Dih-basgit also seems to be correct and conclusive finding in view of the pleader Commissioner's report. In the light of aforesaid position it appears that learned Courts below have committed gross error by not considering the petitioner as adjoining raiyat of the vended land and rejecting the claim of petitioner on unsubstantiated facts.

Thus, for the aforementioned reasons, I am not constrained to uphold the impugned order of Addl. Collector, Saran dt. 16.07.2014 and accordingly the same is set aside.

In the result this revision application is allowed.

Dictated and Corrected by me.

b/a 2-16
Commissioner,
Saran Division, Chapra

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