

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 48/2013

Daib Dayal Giri & ors.

Vrs.

Satya Narain Giri & ors.

ORDER

11-03-2016- The Instant revision application is directed against the impugned order passed by Addl. Collector, Saran in L.C. (pre-emption) Appeal No. 13/2011 on 16.10.2013.

The brief facts of the case are that the disputed piece of land measuring 3 katha 11 dhur, appertaining to khata No. 65 survey plot No. 1750 situated in Mauza Yogia, P.S. Rasulpur, Dist-Saran was purchased by the present respondent Satya Narain Giri S/o Late Ram Naresh Giri, R/o Vill-Yogia Mathiya from one Shyam Narain Singh S/o Late Narsingh Singh through registered sale deed dt. 26.02.2010. Thereafter, one Rameshwar Giri, claiming himself to be the adjoining raiyat of the disputed land, filed a pre-emption case before DCLR Chapra Sadar vide Land Ceiling case No. 03/2010-11 under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961. But during the pendency of the case before DCLR, Chapra Sadar, the original petitioner, Rameshwar Giri died on 24.06.2010 and thereafter his legal representatives were substituted in his plea as petitioner vide order dt. 13.07.2010. The learned DCLR after issuing notices to the parties, heard the case and finally vide order dt. 28.05.2011 rejected the claim of the pre-emptor petitioner holding that nature of disputed land has changed from agricultural to homestead. Feeling aggrieved by the said order, the present petitioners preferred an appeal case hearing L.C. Appeal No. 13/2011 before Addl. Collector, Saran and the said appeal was dismissed vide order dt. 16.01.2013.

On being aggrieved by and dissatisfied with the aforesaid order passed in appeal, the present petitioners have preferred this revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioners argued in details about the whole cause of events leading to coming of this case before the revisional Court. He further argued that the total area of the survey plot No. 1750 is 19 katha 02 dhur of which 6 katha was purchased earlier from the same vendor by the father of the petitioner and the nature of land described in the sale deed document as "Do Fasla" in both the sale deeds. The learned counsel further submitted that during pendency of the pre-emption case before DCLR, the respondent purchaser tried to change the nature of the land by erecting a palani over the disputed land and there after he made prayer for the appointment of a pleader Commissioner to report about the nature of land. He further argued that the pleader Commissioner has wrongly reported that there were residential houses in the vicinity of the disputed plot. This report was even challenged in the lower Court but the learned lower Court did not consider the same. He also submitted that the reported judgment (2008,2013 PLJR page-373) upon which the respondents have placed reliance have no application in the fact situated of present case as the disputed land is not a tiny plot rather its area is 3 katha 11 dhur. He further argued that although the nature of land shown in the survey as capable to be irrigated but the purpose of purchase shown in the sale deed for construction of house. He also submitted that it is almost settled position in law that the nature of land is to be considered only what's show in the recital of the sale deed as such the impugned order of Addl. Collector, as well as of DCLR are fit to be set

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aside inasmuch as it has been wrongly held by these two learned Courts that the disputed land is no longer agricultural in nature rather the same is of homestead. The learned counsel also filed the copy of the reported judgment (1970 BLJR-page-110) in order to support of his above contention with respect to decide the nature of land. He further assailed the impugned order by stating that findings of lower Court is illegal and against the provision of pre-emption as such the impugned order is fit to be set aside and consequently this revision application be allowed.

The learned counsel appearing on behalf of the respondents while opposing the arguments forwarded by the learned counsel for the petitioners, submitted that the impugned order is just and proper and has been passed after careful consideration of the factual matrix of the case. He further submitted that plot No. 1750 is of purely homestead nature as the petitioner himself after some land from that plot constructed a "samadh" of his ancestor. He further submitted that it was due to clerical mistake of the scribe that something wrong has happened regarding the description of the disputed land in the sale deed but the fact is that large number of houses are in the vicinity and the disputed land is not meant two agricultural purpose and even the petitioner's residential house was found in the plot No. 1780 which is in the south of plot No. 1750 as found and reported by the pleader Commissioner. He further argued that the learned Court below has correctly held that the disputed land has changed into Dih-Basgit and over Dih-Basgit land, pre-emption claim is not maintainable and in support of that he also referred to a reported judgments of the division bench of Hon'ble High Court passed in LPA No. 193/2009 (2010(2) PLJR-page-17-18). The learned counsel lastly prayed that as the learned Court below has decided the about the nature of the disputed land, the same does not require any interference now as such this revision petition be dismissed.

Considering the facts and circumstances of the case, material available on records, respective arguments made by the learned counsel for the parties, and on perusal of the impugned order it is apparent that the only contentious issue is to decided in this case as to whether the disputed land can be held as a Dih-basgit land or as an agricultural land. The petitioner pre-emptor is of the view that the said land be considered as an agricultural land as it has been shown to be capable of irrigation. However, on the other hand, the respondent purchaser is of the firm view that, although, the nature of land has wrongly been described in the sale deed due to clerical mistake, but the said land is actually a Dih-basgit land and the purpose of purchase was for construction of a house. He further placed heavy-reliance on the report of pleader Commissioner about the nature of land who has found large number of houses in the vicinity of disputed plot besides petitioner's own house in plot No. 1780 which is in the southern sides of the disputed plot. It is seen that both the learned Court below has arrived at a conclusive finding of facts about the nature of land holding that it has been changed from agricultural to Dih-basgit and I do not find any good ground to take a contrary view against the categorical finding of the learned Court below in absence of any reliable evidence in support that the nature of land is still agricultural. In other wards the report of pleader Commissioner can not be discarded merely on the fact that the nature of land has been shown to be agricultural in the sale deed.

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

Dictated and corrected by me.

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11-2-16  
Commissioner,

Saran Division, Chapra

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11-2-16  
Commissioner,

Saran Division, Chapra