

In The Court of Commissioner, Saran Division, Chapra

**Land Ceiling (Pre-emption) Revision No. 02/2014**

**Rama Shanker Choudhary**

**Vrs.**

**Sudama Choudhary & ors.**

**ORDER**

10.02.2014 - The instant revision application is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) appeal case No. 11/12 on 20.12.13.

The brief facts of the case are that the disputed piece of land measuring 1 katha, appertaining to khata No. 57 plot No. 539 situated in Mouza Mahathwa, P.S. Kateya, Dist-Gopalganj was purchased by Sudama Choudhary S/o Late Mahadeo Choudhary, R/o Vill Nagad Poiya from one Bengali Choudhary (since deceased) through registered sale deed dt. 28.12.2011. Thereafter the present petitioner Rama Shanker choudhary S/o Late Kodai Choudhary, claiming himself to be the co-sharer and adjoining raiyat of the vended land filed a pre-emption case before DCLR, Hathua vide Land Ceiling 16(3) case No. 15/2011-12 under the provision of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961. Then the learned DCLR after issuing notice to the other side, heard the case and finally vide order dt. 30.06.2012 rejected the pre-emption claim of the present petitioner holding that no pre-emption claim is maintainable over homestead land. Feeling aggrieved by the said order the present petitioner approached the learned Collector, Gopalganj by way of filing an appeal case bearing L.C. 16(3) appeal case No. 11/12 and the said appeal was dismissed vide order dt. 20.03.2013 wherein he held that the disputed land is no longer in agricultural use rather the same is being used for residential and commercial purposes.

On being aggrieved by and dissatisfied with the aforesaid order of Collector, Gopalganj, the present petitioner has preferred this revision petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner, at the very outset of his argument, submitted that the present petitioner is the co-sharer and adjoining raiyat of the disputed land and in order to substantiate his claim further he also threw light about the respective share of different brothers of Dhanai Choudhary who got the land in gift from one Parbatiya Devi, W/o Bhuchengi Ahir, the recorded raiyat of plot No. 539, whose total area is 5 katha 8 dhur. He further submitted that even in the disputed sale deed, the name of this petitioner has been shown in the western boundary. He further pleaded that the respondent purchaser wrongly asserted before DCLR that the land in question is not a culturable land rather it is a parti land and there are various construction standings near the disputed plot so the character of the disputed land has been changed from agricultural to residential. He also submitted that the learned DCLR without doing any local inspection of the disputed land on 28.06.2012, wrote in the order that he had found residential house in the vicinity during spot inspection. He further argued that even the learned Collector without appreciating the legal aspects of the case as well as the pleadings advanced before him passed the impugned order. He further assailed the impugned order that the learned Collector has not given his finding regarding the co-sharer or adjoining raiyat status claimed by the petitioner. He lastly submitted that as the impugned order suffers from illegality and arbitrariness the same needs to be set aside and in turn this revision petition be allowed.

The learned senior counsel appearing on behalf of the o.p while strongly opposing the argument forwarded by the learned counsel for the petitioner, submitted that the impugned order is legally valid. He further argued that the disputed land is no longer agricultural in nature rather the same is fit for construction work and many people have already constructed houses and established "Gumati" in the immediate vicinity of the disputed land. He further argued that the learned DCLR also during local inspection of the disputed land has found houses and shops in the vicinity of the land and it was due to that reason he finally held that since the character of land has been changed, no pre-emption could be allowed. He also submitted that the learned Collector also held the similar view and the petitioner's appeal was dismissed being devoid of any merit is also fit to be dismissed by this Court.

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 quite apparent that the only issue needs serious consideration as to whether the pre-emption claim can be allowed or not for the said transferred land. The claim of the pre-emptor petitioner rests on the fact that he being a co-sharer and adjoining raiyat of the disputed land and the nature of land being agricultural, his claim of pre-emption right can not be denied. At the same time, the purchaser respondent is of the view that since the disputed land is no longer used for agricultural purpose, the same can not be held as agricultural land and the same has been proved in the local inspection by DCLR himself who had found larger number of houses and shops in the vicinity of the disputed land. So no pre-emption claim is maintainable on a land which is primarily not being used for agricultural activities and in support of this contention he referred to a reported judgment (2010(2)PLJR-17). It is also seen that the learned Courts below has decided the issue appropriately. It is also seen that the learned Collector relied heavily upon the local inspection report of DCLR wherein it has been mentioned that many house and commercial structure including a temple as well as residential house and shop of respondent was in the vicinity of the disputed land. Thus I do not find any apparent error in the impugned order as such the same is upheld.

In the result this revision petition is dismissed.

Dictated and corrected by me.

*10.2.16*  
Commissioner,

Saran Division, Chapra

*10.2.16*  
Commissioner,

Saran Division, Chapra