

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 442/2007

Nathu Mahto

Vrs.

Brij Kumari & ors.

ORDER

06.02.2016 -- The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal case No. 08/2005 on 13.09.2007.

The brief facts of the case are that the disputed piece of land measuring 1 katha 10 dhur appertaining to khata No. 55, plot No. 883 of Mauza Gajipur, P.S.-Ekma, Dist-Saran was purchased by one Brij Kumari W/o Nand Kishore Baitha, resident of the same village from one Marai Sah, S/o Badar Sah through registered sale deed dated 25.05.99. Thereafter, one Nathu Mahto, S/o Rikhi Dhanuk claiming himself as adjoining 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, Chapra Sadar vide Land Ceiling case No. 45/2003-04 for reconveyance of the said land. The learned DCLR after hearing the parties, finally vide order dt.17.05.2005 allowed the pre-emption claim in favour of the present petitioner. Feeling aggrieved by the said order the present respondent filed an appeal case bearing L.C. Appeal case No. 08/2005 before Addl. Collector, Saran. The learned Addl. Collector, Saran vide order dt.13.09.2007 set aside the order of DCLR, Chapra Sadar holding that the pre-emption right is a very weak right and the onus lies upon the person seeking pre-emption to establish his claim absolutely. On being aggrieved by and dissatisfied with the aforementioned appellate order, the present petitioner has 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, submitted that the said order has been passed without considering the material facts of the case appropriately. He further submitted that the learned lower Court erred in holding that Rikhi Dhanuk had four sons and all were separate and only Nathu Mahto had filed the pre-emption claim but in fact the learned lower Court ought to have held that only one brother can also file pre-emption claim. He also argued that although it was found in the local inquiry of the disputed land that there was paddy crops in the disputed plot and in other surrounding plots and there was palani for agricultural purpose. But it was wrongly held that the said disputed land was not agricultural rather than same was held to be homestead land on which no pre-emption claim is maintainable. He further argued that the learned lower Court ought to have held that homestead land is also under the purview of section 16(3) of the ceiling Act and in support of that he also referred to a reported judgment, PLJR-2004 page 339 and PLJR-1969 page 418. He lastly argued that as the impugned order is illegal and against the factual matrix of the case, the said order is fit to be set aside and this revision petition be allowed.

The learned counsel appearing on behalf of the respondents, while opposing the arguments advanced by the learned counsel for the petitioner, submitted that the impugned order is neither bad in laws and facts nor against the circumstances of the case rather the said order is just and proper. He further argued that it is the settled principle of law that the revisional

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Court has to consider only the illegality of the appellate order. He further submitted that the learned Addl. Collector has passed a legal order in view of the fact that the very aim and objection of the legislature in drawing section 16(3) of the ceiling Act is to put a curb and discourage fragmentation of agricultural holding and the present petitioner no where seems to be in position to make a big agricultural block by amalgamating the land in question along with schedule-II land and the schedule-II land is not being cultivated by them including this petitioner and they have raised there separate structure and even R.S. plot No. 925 which is considered by petitioner an adjacent to the vended land is recorded in R.S. Khatiyas as homestead land. The learned counsel further submitted that the said disputed land was purchased by the respondent for construction of her house and the petitioner's name is not mentioned in any of the boundary rather the name of Rikhi Mahto, father of the petitioner was mentioned in the western boundary as such the petitioner can not claim pre-emption right absolutely on the ground that he is in the boundary of the disputed plot. He lastly submitted that this revision petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records claims and counter-claims made by the contesting parties and on perusal of the impugned order, it is seen that two important points needs consideration: firstly whether the petitioner qualifies to be considered as a boundary man of the vended land or not and secondly whether the disputed land, should be considered as a homestead land or not. The learned counsel for the petitioner strongly submits that the petitioner is the boundary raiyat by virtue of plot No. 925 which is in the name of his father whereas this claim of the petitioner is disputed by the respondent on the ground that the petitioner alone can not claim pre-emption as his other three brothers have not made any claim. This plea of the respondent seems to be acceptable as the petitioner's individual name has not been mentioned in any boundary of the vended land rather the name of his father has been shown in the western boundary. The other point as to whether the disputed plot is of agricultural nature or homestead has been dealt by the Addl. Collector holding that the said land was found with different structure upon them in local inspection and the said disputed land can not be converted into a big plot by amalgamating this land. Thus, I find that the learned appellate Court has considered each and every aspects of the case on proper appreciation of the local inspection report as well as taking into account the very purpose of enactment of section 16(3) of the Ceiling Act before arriving at the conclusive findings of fact. I do not find any reason to take a different view in the matter at revisional stage.

For the aforementioned reasons and discussion made therein the impugned order of Addl. Collector, Saran dt. 13.09.2007 is upheld.

In the result of this revision petition is dismissed

Dictated and Corrected by me.

V
6.2.16

Commissioner,
Saran Division, Chapra

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Saran Division, Chapra