

**In The Court of Commissioner, Saran Division, Chapra  
Land Ceiling(Pre-Emption) Rev. No. 23/2008  
Mangal Sah  
Vrs.  
Abdul Mañan & Ors.**

**ORDER**

21.02.2014

The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj on 13.12.2007 in Land Ceiling Appeal No. 52/2005-06.

The brief facts of the case are that the disputed piece of land measuring 5 katha, appertaining to Khata No. 57 R.S. Plot No. 1675 situated in village, Mohamadpur, circle Sidhwalia, Dist- Gopalganj was transferred to one Mangal Sah, the present petitioner by one Razaque Mian of the same village through a registered sale deed executed on 02.05.2000. Thereafter, Abdul Manan and his brothers S/o Hamid miya filed a pre-emption petition for the reconveyance of the transferred land claiming themselves to be the co-share and adjoining raiyat of the transferred land, before DCLR, Gopalganj vide pre-emption case No. 14/2000-2001. The said case was allowed in favour of the present OP. No. 1 by DCLR, Gopalganj vide order dated 19.08.2002. Feeling aggrieved by the order of DCLR, Gopalganj, the present petitioner, preferred an appeal case before Addl. Collector, Gopalganj vide Land ceiling 16(3) case No.- 52/2005-06. The learned Addl. Collector, Gopalganj vide order dated 13.12.07 disposed of the said appeal wherein he upheld the earlier order passed by DCLR, Gopalganj and dismissed the appeal.

On being aggrieved by and dissatisfied with the aforesaid order passed by Addl. Collector, Gopalganj, the petitioner preferred this revision before this court.

Heard the learned counsels for the parties.

The learned counsel appearing for the petitioner submitted in the beginning that the impugned order is contrary to the provisions of section 16(3) of the Bihar Land reforms (Fixation of ceiling Areas and Acquisition of surplus land) Act- 1961. He further submitted that the impugned order dated 13.02.2007 is vitiated by the findings which are perverse and contrary to law as the fact that present respondent No. 4 to 6 (pre-emptors) were neither co-sharer or adjoining raiyat of the vended land and further more, the disputed land is Dih -Basgit in nature and the petitioner had already put palani, Nad, Khutas etc, and therefore, Ops No. 1 to 3 had no preferential right of pre-emption of the disputed land. Thus the pre-emption petition is not maintainable but the learned court below ignoring the claim of the petitioner allowed the pre-emption. The learned counsel further submitted that ops No. 1 to 3 are by caste Mohamadans and as per Mohamdan Law there can not be any coparcency, therefore, the pre-emptors are no way co-sharer or co-



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parcener of the transferor of the disputed land. The learned counsel while pleading the case, further raised the point that the nature of disputed land has been changed from culturable to home-stead and the claim of pre-emption on homestead land is not maintainable. The learned counsel while assailing the impugned order submitted that the lower court has wrongly held that Land in question is chawar Land according to entry of R.S. Khatiyani and even the enquiry report regarding the nature of land is wrong and collusive as it has wrongly been held that the ops are boundary man of the disputed land and the nature of land is culturable. The learned counsel also submitted that the ops 1 to 3 were actually not the boundary raiyat of the disputed land on the date of purchase i.e on 2.05.2000 but later on consolidated their claim of pre-emption and proving themselves to be boundary man as they purchased another piece of land in plot No. 1694 & 1663 on 29.07.2000 in the name of their father after filing of pre-emption case. He also filed a copy of the sale deed. The learned counsel lastly prayed that the instant revision petition be allowed.

The learned counsel for the ops vehemently opposed the submission made by the learned counsel for the petitioner and submitted that Ops. No. 1 to 3 (Pre-emptor) and op No. 4 (vendor) belong to same branch as per the genealogy. He further submitted that it is an admitted fact that Biland Miya was common ancestor of O.P. No. 1-3 and O.P. No. 4 and disputed Plot No. 1675 recorded in R.S. Khatiyani in the name of Billand Miya, and it was on that basis the ops No. 1-3 is co-sharer and adjoining raiyat of the disputed land as such they claimed pre-emption before DCLR and the same was allowed in their favour. He further argued that the disputed land was transferred to present petitioner by Razaque Mian through sale-deed and the petitioner was neither co-sharer nor boundary man. The learned counsel also submitted that Billand Miyan had five sons, Hasmuddin Miyan, Ekbal Miyan, Sobran Miyan, Kismat Miyan and Hafiz Miyan and Ops No. 1 to 3 are grand sons of Ekbal Miyan. He further said that Hasmuddin Miyan gifted his share to the ops No. 1 to 3 by registered gift deed. The learned counsel further argued that the petitioner by no way become co-sharer and adjoining raiyat of the vended land so in order to defend himself he raised another ground that the nature of land has been changed in to Dih-Basgit. But the fact is that the disputed plot is vacant and during pending of the case the petitioner tried his best to change the nature of land by raising temporary structure like palani etc. On the other hand the recital of sale deed shows that the land is kast kayani. He further submitted that the learned DCLR himself enquired the nature of land and he found that the land is agricultural and in the vicinity other agricultural land was there in which crops were grown and there was no residential houses nearby so the claim of the petitioner that the land is dih-basgit is not tenable. The learned counsel lastly




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prayed that the impugned order is fit to be upheld and this revision petition is fit to be rejected.

Considering the facts and circumstances of the case, material on records and on going through the claims and counter claims made by the learned counsel for the parties, it seems to me that two important points needs for consideration as to whether the pre-emptor i.e. ops. No. 1 to 3 are the boundary man and co-sharer to claim pre-emption right and second whether the transferred land is agricultural or home stead land.

These two questions have been decided by the courts below with clarity and reasonings and the petitioner failed to prove before the court below that ops No. 1-3 are not boundary raiyat of the vended land. The second view that the vended land is not agricultural but homestead is also not tenable in view of the fact that the learned DCLR himself enquired the nature of land and found that the land is agricultural in nature. So I do not find any justification to discuss the same here also. In fact, I find no reasons to interfere with the impugned order of Addl. Collector, Gopalganj, dated 13.12.2007. Consequently, this revision being devoid of merit is dismissed.

Dictated & Corrected by me.

  
Commissioner,  
Saran Division, chapra

  
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Saran Division, Chapra