

**In The Court of Commissioner, Saran Division, Chapra
Land Ceiling(Pre-Emption) Rev. No. 300/2007
Kishori Devi & Ors.**

Vrs.

Haridwar Mishra & Ors.

ORDER

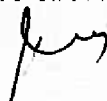
The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 5/2006 on 30.04.2007 (Suryug Sah Vrs. Haridwar Mishra & Ors.)

The brief facts of the case are that the disputed piece of land bearing plot No. 6021, appertaining to Khata No. 1198, measuring 17½ dhurs and situated in Kasba Maker, P.S.- Maker, Dist- Saran was transferred through registered sale deed dated 07.09.2004 in favour of one Saryug Sah, husband of present petitioner, by present op. No. 2 & 3, Krishna Kumar Mishra and Sarita Mishra jointly. Thereafter, the present o.p. No. 1 Haridwar Mishra claiming himself to be the co-sharer and adjoining raiyat of the vended land filed an application for pre-emption in respect of above vended land under the relevant provision of Bihar Land Reforms (Fixation of ceiling Area and Acquisition of surplus Land) Act- 1961 before DCLR, Chapra Sadar vide Land Ceiling Case No. 18/2004-05. The learned DCLR, Chapra Sadar vide order dated 17.12.2005 allowed the pre-emption claim of the present o.p. No. 1 on the finding that pre emptor is the co-sharer and adjoining raiyat of the vended land. Feeling aggrieved by the said order of DCLR, the present petitioner preferred an appeal before Addl. Collector, Saran vide L.C. Appeal No. 5/2006 and the learned Addl. Collector, vide order dated 30.04.2007 upheld the order of DCLR, Chapra, Sadar and accordingly dismissed the appeal.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the husband of the present petitioner preferred a revision case before this court. But during the pendency of revision, the original petitioner, Saryug Sah, the purchaser of the disputed land died and, thereafter, his legal representatives were substituted in his place vide order dated 22.10.2011 of this court.

Heard the parties.

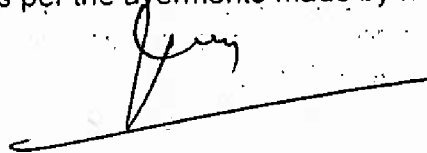
The learned counsel for the petitioner submitted that the impugned order of Addl. Collector is against the weight of evidence on record as he believed the case of pre-emptor and disbelieved the case of purchaser. He further argued that the court below has erred in rejecting the report of Survey Knowing Commissioner, who had conducted measurement and inspection of the disputed land and its location and the existence of various houses and shops in the vicinity and a village road to the south of the vended plot which runs east to west. The learned counsel further stated that two circumstances are



important for consideration are that the disputed land measuring merely 17½ dhur in rural area was purchased for rupees Thirty thousand and the pre-emptor, never applied for appointment of another Commissioner to determine the nature of the disputed land. The learned counsel further pleaded that the disputed piece of land was actually purchased for the construction of house so the pre-emption would not apply on homestead land and in support of this contention he also filed the copies of reported decisions of the Hon'ble High Court. PLJR-2010(2) page No. 17-18; PLJR 2010(1) Page No. 845-848. The learned counsel lastly prayed that the impugned order of Addl. Collector, be set aside and this revision be allowed.

The learned counsel appearing on behalf of the ops submitted that the disputed land was transferred to a person who was neither co-sharer nor an adjoining raiyat of the vended land whereas the o.p. is the co-sharer and adjoining raiyat of the vended land and it was on this ground the learned DCLR had allowed pre-emption in favour of the present o.p No.1 and the learned Addl. Collector, also upheld the same. So there is no illegality in the impugned order of Addl. Collector hence the same may be upheld by this court. He further submitted that Mahabir Mishra had two sons Sheochandra Mishra from the first wife and Haridwar Mishra from the second wife. Sheochandra Mishra died leaving a son Krishna Kumar Mishra who executed his half share of 17½ dhur of plot No. 6021 to an outsider. But the plot No. 6012 which is used by this o.p no.1 for agricultural purpose is contiguous to the vended plot. He further said that the name of the o.p No.1 also appears in the Eastern and Western boundary of the sale deed of disputed plot thus proving that this o.p No.1 is the co-sharer and adjoining raiyat of the vended land. He also argued that the nature of land has not yet been changed as claimed by petitioner and the report of Advocate Commissioner is not correct as such the same was not considered by the learned DCLR. He further argued that the nature of the disputed land is cultivable as mentioned in the sale deed. The learned counsel lastly prayed that this revision petition is fit to be dismissed.

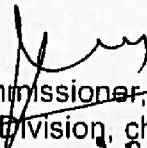
Considering the facts and circumstances of the case, material on records and on going through the claims and counter, claims made by the learned counsel for the parties, it appears that the main claim of the petitioner is that the disputed land is not agricultural land but it is a homestead land and hence pre-emption claim of the o.p No.1. is not legal. But from perusal of the sale-deed document, it is seen that the disputed piece of land of plot No. 6021 was shown to be agricultural land and the name of o.p. no. 1 is also found in the Eastern and Western boundary of the disputed plot. This obviously shows that the o.p No.1. is the adjoining raiyat of the vended land. The o.p. No. 1 is also a co-sharer of the vendor as per the averments made by him and




the petitioner also did not dispute the same. The important issue is to consider now as to whether the disputed land be treated as a homestead land or agricultural land. The petitioner claims that he purchased the land for constructing his house and his said claim is further consolidated in the report of Advocate commissioner but the said claim of the petitioner is very difficult to be taken into account for deciding the nature of land in view of the fact that this intention of the petitioner does not reflect in the sale deed document in respect of the disputed land. In fact , the nature of land in the sale deed is shown as Kast land. It is also true that description given in the sale deed is normally strong evidence with regard to the nature of land and the purpose of purchase is not relevant for determining the character of land .The learned Addl. Collector, saran has decided the matter keeping in view the factual matrix of the case and material available on records..

In the above premises, I find no error in the impugned order of Addl. Collector, saran so as to warrant interference by this court. This revision petition is accordingly dismissed.

Dictated & Corrected by me.


~~Commissioner,~~
~~Saran Division, Chapra~~
13/5/14


~~Commissioner,~~
~~Saran Division, Chapra~~
13/5/14