

In the Court of Commissioner, Saran Division, Chapra
Land Ceiling (Pre-emption) Rev. No. 285/2014

Raj Kumar Sah & ors.

Vrs.

Birendra Sah & ors.

ORDER

The instant revision petition is directed against the impugned order passed by Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 07/2013 on 02.09.2014.

The brief facts of the case are that the disputed piece of land measuring 19 dhur, appertaining to khata No. 150, plot No. 895 situated in Mouza Barahimpur, P.S.-Sidhwalia, Dist-Gopalganj was executed through registered sale deed on 12.09.07 by Most. Kaimrul and Guddu Mian in favour of one Birendra Sah of the same village. Thereafter, Raj Kumar Sah and Amerika Sah, claiming themselves to be the adjoining raiyat and co-sharer of the vended land, filed a pre-emption case vide case No. 18/2007-08 u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and acquired of surplus land) Act-1961 before DCLR, Gopalganj. Which was dismissed vide order dt. 21.05.2013. Feeling aggrieved by the said order, the present petitioner filed an appeal before Collector, Gopalganj vide Land Ceiling 16(3) Appeal case No. 07/13 which was dismissed by Collector vide order dt. 02.09.2014 holding that the said disputed land no longer be treated as agricultural land.

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

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order of Collector, submitted that the order of the Court below is bad in law and against weight of the evidence on record. He further submitted that the Court below ought to have held that the petitioner is a co-sharer and adjoining raiyat of the vended land on o.p. No. 1 is neither an adjoining raiyat nor a co-sharer of the vended land and in that situation Court below ought to have allowed the pre-emption claim of the petitioner. The learned counsel further argued that the respondent is not a landless person rather the possession more than one acre of land and also having his pucca house and the same was also reported by the C.O. but the Court below failed to appreciate the same. He also submitted even the sale deed document with respect to plot No. 895 shows that the disputed plot is irrigated land. The learned counsel also referred to various decisions of the Hon'ble High Court in support of his contention and lastly prayed that the findings of learned Court below is illegal and arbitrary as such the same may be set aside and in turn this revision application be allowed.

The learned counsel appearing on behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the petitioner and submitted that both the lower Courts after considering the facts involved in the case and report of C.O. Sidhwalia found that the disputed land has been changed into residential plot and accordingly held that pre-emption petition filed by the petitioner was not tenable. He further argued that the report of C.O. regarding the nature of disputed land has never been challenged by the petitioner in any of the lower Court and it is a settled position in law that the nature of land is to be seen on the date of filing of the pre-emption petition. He lastly submitted that as the learned Court below have

decided the case appropriately and this revision petition having no merit and is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that only two contentious issue involved in this case, are to be decided as to whether the disputed piece of land can be considered as agricultural land or residential land and secondly the respondent is a landless person or not in true sense of the term. The learned counsel for the petitioner is of the view that the disputed land is still agricultural in nature and he being the adjoining raiyat and co-sharer of the same, his pre-emption claim is very much maintainable. On the other hand, the learned counsel for the respondent strongly submitted that the said disputed land has changed its nature and the same has become residential plot. It is also seen that the learned Courts below categorically held the said disputed land is of residential nature in view of the fact that the said land was purchased for residential purpose as mentioned in the recital of the sale deed. But this findings of the learned Courts below can not be held as absolutely correct in view of the fact that purpose of purchase is not relevant for determining the character of the land. On the other hand, it has almost been settled in law that description of land given in the sale deed document is a strong evidence to suggest the actual nature of land. Moreover, the learned counsel for the petitioner strongly pleaded that the respondent is not a landless person as he has got more than one acre of land including his share in ancestral land as well as the land purchased by him through registered sale deed from time to time and in support of that he has submitted the photo copies of the said documents. Thus, it appears that the respondent is neither a landless person nor the disputed land can be held as a homestead land. In fact, it is seen that the learned Courts below have miserably failed to consider the claim of the pre-emptor which is based on the fact that he being the adjoining raiyat of the vended land. The Courts below heavily relied on the averments of the purchaser that the said disputed land is of residential nature and the same has been purchased by him for residential purpose. Obviously such averments should not have been given much credence in absence of any strong evidence thereto. The disputed question of facts with regard to nature of land and landless status of the purchaser needs to be inquired into thoroughly before arriving at the final findings of fact and before outrightly rejecting the claim of pre-emption.

For the aforementioned reasons, the impugned orders of DCLR, Gopalganj and Collector, Gopalganj are set aside and the case is remitted back to Collector, Gopalganj to pass a fresh order in accordance with law after thoroughly examining the claim of the parties, after making spot inquiry to ascertain the nature of land and also to inquire about the landless status of the purchaser.

With the aforesaid observations and direction this revision petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.