


आदेश, की क्रम सं० और तारीख 1	1 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में लिखनी तारीख सहित 3
20.12.2016	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.- 06/2005 Dist.- Siwan</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Jhulan Singh &amp; Others - Petitioner/ Appellant</p> <p>Versus</p> <p>Rajkumar Rajak &amp; Others- - Opposite party</p> <p>=====</p> <p><b><u>Appearance:</u></b></p> <p>For the Appellant/Revisionist : Sri Ramadhar Panji</p> <p>For the OP : Sri Ravindra Kumar Singh</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a Pre-emption Case filed by the Revisionist who is also the Pre-emptors. The Revision was filed on 07.01.2005 against the order passed by the Learned Collector on 09.11.2004 and 27.11.2004 in Case No. 336/2003 and 338/2003. The Case was admitted on 08.02.2005. Since then the matter came up on many dates for hearing. On some dates it was part heard. However, subsequently the case was dismissed for default on 09.10.2012 due to the continued absence of the Petitioner.</p> <p><i>[Handwritten signature]</i> 20/12</p>	

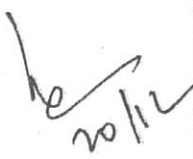
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में दिखायी तारीख सहित 3
	<p>The Petitioner then filed a Restoration Petition and the same was allowed 10.04.2013. The Lower Court Record was finally received on 04.07.2013. After this, the hearing continued. At one stage, the Petitioner requested for a field inspection to ascertain the nature of land which was duly rejected by the then Additional Member on 16.09.2014.</p> <p>In the mean time, the Petitioner produced an order of the Hon'ble High Court in CWJC No 2087 in which the Hon'ble High court observed on 05.04.2016 that if final order is not passed by the Board, then the same will be subject to the final outcome of the present proceeding.</p> <p>Based on this observation, the then Additional Member kept the case pending by order dated 21.06.2016 till the disposal of the matter by the Hon'ble High Court. However the Additional Member kept the matter for further action on 13.09.2016 but no hearing could take place since then. The case was finally heard on 15.12.2016.</p> <p>The Learned Advocate of the Revisionist was present who pleaded that the case be kept in abeyance till the disposal of the matter by the Hon'ble High Court.</p> <p>I perused the order of the Hon'ble High Court and I find that the court has not stayed this proceeding before the Board. The Hon'ble High Court only observed that any final order passed by the Board shall be subject to the outcome of the proceeding before the Hon'ble High Court.</p> <p>Thus I am inclined to dispose of this matter at the earliest and recall the order of the learned Additional Member for keeping this proceeding pending. I am inclined</p>	



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	<p>to pass a final order so that any aggrieved party may approach the Hon'ble High Court on substantive issues.</p> <p>To this the Learned Advocate of the Petitioner pleaded that if the Board wishes to resume hearing, short date be given which the Court was not inclined as the matter has already been dragged for more than 10 years.</p> <p>The Learned Advocate of the OP No 1 is present and was ready to be heard. Accordingly, this court conducted the hearing of both the sides on merit on 15.12.2016. At the end of the hearing, the Learned Advocate of the Revisionist wanted some time to file written notes of arguments which was given. The Learned Advocate filed his written notes of argument on 16.12.2016 and now a final order is being passed today.</p> <p>The Learned Advocate of the Revisionist who is the Pre-emptor says that he is boundary raiyat and a Co-Sharer of the land in dispute whose areas is approximately 3 Katha and 11 Dhur. He further says that two cases was filed viz. 2003 and 2006 and both were tagged together.</p> <p>As per the Learned Advocate of the Revisionist, this land is agricultural which fact has been established by the report of the Circle Officer and hence pre-emption lies. He further says that the OP No1 (who is the vendee) is not landless and he has a house in the vicinity and three houses in all. As per written notes of arguments, he claimed that OP No 1 (in Revenue Proceeding No 43/2009) is a Circle Officer of Ucchka Gaon Block in Gopalganj district.</p> <p>The Petitioner has land surrounding three sides of the disputed plot, however the OP No 2 to 4 have sold this</p>	

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	<p>land to an outsider OP No 1. The OP No 2 to 4 are the Pattedar of the Revisionist. To prove this point, he has filed a Vanshawali.</p> <p>I perused the written notes of argument submitted by the Revisionist who claimed that the definition of 'land' as given in section 2(f) of Bihar Land Ceiling Act, 1961 includes the homestead land of the landholder and hence residential lands do get covered under the Ceiling Laws. Thus, he says that the order of the Learned SDO Maharajganj and Learned Collector Siwan is fit to be set-aside. He further mentions that there is no material fact to arrive at the finding that the land use had changed from agriculture to residential. As per the sale deed and Khatiyan, it can be seen that the land is agricultural. He further claims that presently wheat crop is standing on the land which can be verified from the local inspection.</p> <p>I heard the Learned Advocate of the OP No 1 Shri Raj Kumar Rajak who claimed that he is a landless person and belongs to SC Community. He further says that he has purchased this land for house construction. He refers to the order of the Learned DM and mentioned that a pre-emption proceeding cannot lie against a landless person and files a judgement of the High Court in his support.</p> <p>From the perusal of the orders passed by the Learned SDO and the Learned Collector, it seems that both the Courts have rejected the pre-emption application as non maintainable.</p>	



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	<p>From the material available on record and from the arguments propounded by the Learned Advocates of both the sides, I come to the following findings:-</p> <p>(a) It is a fact that one OP (in pre-emption Case No. 43/2009) namely Shri Nand Kishore Rajak is a Circle Officer and Government employee and hence he cannot take the refuge that he is a landless person and hence pre-emption does not lie against him. The very fact that he is a Government employee, he can not avail any benefit under the Bihar Land Ceiling Act, 1961.</p> <p>(b) On the other hand, the Petitioners have not been able to prove that they are the Co-Sharers of the disputed plot. He has not been able to refute the finding of the Learned SDO who held that the disputed property had already been partitioned by Civil Suit No. 240/77. He has been silent on this issue in his written notes of argument.</p> <p>(c) That the disputed plot is so small that any agriculture activity is not possible. Even the surrounding plots are having houses of various others persons unconnected with this dispute.</p> <p>(d) Now coming to the point raised by the Petitioner that the definition of 'land' under Section 2(f) Bihar Land Ceiling Act, 1961</p>	



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<p>6 20/12</p>	<p>includes the homestead land and hence the argument of the Petitioner that Pre-emption proceedings can be initiated on homestead land is not tenable. If one reads section 16(3) of the same Act, one may find that the reference of 16(3) is only with regard to 'raiya' and not any person. If we refer to the definition of 'raiya' under Section 2(k) then, it means 'primarily a person who acquires a right to hold land for the purpose of cultivating.' Hence, I do not agree with the view of the Petitioner that pre-emption proceedings may also lie against homestead land.</p> <p>(e) It is also an admitted fact that the OPs have purchased this plot for the purpose of constructing a house. The Petitioner has been claiming the land as one belonging to agriculture category on the basis of a very old Survey of 1916-17. Since then, the land use has changed, however, the Khatiya has not been updated. This Court finds it difficult to support the Petitioner's argument that the land is agricultural, on the basis of a very old document.</p> <p>That be the case, I find that in both the Analogous cases lying with the Board of Revenue namely Case No. 6/2005 and Case No 43/2009 are primarily</p>	

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	<p>concerning purchase of plot for residential purposes and hence pre-emption proceedings cannot apply on such cases.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p><i>Dictated &amp; Corrected</i></p> <p><i>K.K.Pathak</i></p> <p><b>K.K.Pathak</b> Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;"> <p><i>(K.K.Pathak)</i></p> <p><b>(K.K.Pathak)</b> Additional Member Board of Revenue, Bihar.</p> </div> </div>	