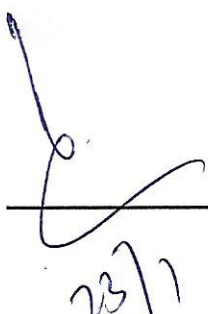


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
23.01.2017	<div><p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p><p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.:- 137/2006 Dist.:- Aurangabad</p><p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p><div><div>=====</div><div><div>Jag Narayan Mehta @ Mahto</div><div>Versus</div><div>Naresh Prasad @ Mahto & Others-</div></div><div><div>- Petitioner/ Appellant</div><div>- Opposite party</div></div><div>=====</div></div><p><u>Appearance:</u></p><div><div>For the Appellant/Revisionist</div><div>:Shri Manindra Kishore Singh</div><div>For the OP</div><div>:Shri Jitendra Prasad Singh</div></div><p style="text-align: center;"><u>ORDER</u></p><p>This is a Pre-emption matter in which a Revision application was filed on 18.07.2006 against the order passed by the Learned Additional Collector, Aurangabad on 13.03.2006 in Ceiling Appeal No. 186/2004. The case was admitted for hearing as well as the points of limitation on 19.03.2015.</p><p>The Lower Court Records took time to reach. Finally, the case came up for hearing on 20.12.2016, wherein the Petitioner sought a short adjournment. The case was accordingly, posted for hearing on 20.01.2017.</p><p>The Learned Advocate of the Petitioner, who is the Purchaser, was heard in great detail. I also heard the</p></div> <div></div>	

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	<p>Learned Advocate of the OP who is the Pre-emptor. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he claims that he purchased 6 decimals of land from Plot No. 765 Khata No. 139 on 18.03.1999. The Pre-emptor filed an application on 25.10.2000 before the court of the Learned DCLR who rejected the Pre-emption application. The Learned DCLR rejected the Pre-emption application on the basis of the report of the Circle Officer which mentioned that the Petitioner Revisionist is the adjacent raiyat.</p> <p>Aggrieved by this order, the Pre-emptor went in appeal before the Learned Additional Collector. The Learned Additional Collector, however, allowed the appeal on the ground that the report of the Learned Pleader Commissioner mentioned that the Revisionist is not the adjoining raiyat. Therefore, he rejected the report of the Circle Officer and upheld the report of the Learned Pleader Commissioner.</p> <p>The Learned Advocate further avers that it is basically to decide between the report of the Learned Pleader Commissioner and report of the Circle Officer. Continuing his arguments, he says that though he is not a Co-sharer but he certainly is an adjacent raiyat. He intends to use the land for homestead purpose and he has a house standing on the disputed plot.</p> <p>I also heard the Learned Advocate of the OP, who is the Pre-emptor. As per the Learned Advocate, the Pre-emptor is the own brother of vendor and therefore he is</p>	

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आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर ³ 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>both a Co-sharer and an adjacent raiyat. The sale deed which was executed on 18.03.1989 was registered on 03.08.2000 and this explains the delay in filing the Pre-emption application.</p> <p>The Learned Advocate further mentioned that it is an admitted position that Plot No. 735 is adjacent to the disputed plot 765. Plot 735 has an area of 5 decimals. He further avers that the Pre-emptor has purchased Plot No. 735 from the same vendor brother in 1997 hence he is an adjacent raiyat.</p> <p>The Learned Advocate further mentioned that he is using the plot 735 for agricultural purposes.</p> <p>Concluding his argument, the Learned Advocate of the OP says that from the disputed plot 765, the vendor (Pre-emptor own brother) sold 6 decimals to the Petitioner and 4.66 decimals to Petitioner's other brother. The Pre-emptor had challenged the other sale deed concerning the Petitioner's other brother as well and a Pre-emption case was filed against the Petitioner's brother also and the Learned DCLR gave an order in his favour. Petitioner's brother went in appeal where he lost the case on 13.03.2006.</p> <p>Having concluded the hearing, and having perused the material available on record as well as Lower Case Records, my own findings on the issue are as under:-</p>	



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	<p>(a) I find that it is an admitted position that though the vendor and the Pre-emptor are brothers but they have already undergone partition. That be the case, the Pre-emptor cannot claim to be a Co-sharer because the properties have been partitioned. Hence, there are no Co-sharers in the dispute and only issue remains to be adjudicated is regarding adjacency.</p> <p>(b) I have perused the report of the Learned Advocate Commissioner dated 07.04.2003. As per the report, it seems that Jagnarayan Mahta (the Revisionist in this case) is not the adjacent raiyat to the disputed plot. However, an objection was filed by the Revisionist mentioning that the boundary given by the Learned Advocate Commissioner is wrong. Based on this objection Petition, the matter was re inquired by the Circle Officer.</p> <p>(c) As per the report of the Circle Officer, it is evident that the Petitioner is an adjacent raiyat.</p> <p>(d) From the said report, it is also categorical that the land is in the possession of the Revisionist and the intended purpose of the disputed land is residential.</p>	

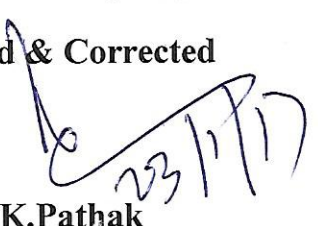

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर ⁵ 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>(e) It is also a proven fact that the land is under peaceful possession of the Revisionist as is confirmed from the order dated 03.11.2005 of the Learned SDM in proceeding under Section 144 CrPC (Case No. 1045/2005).</p> <p>(f) From the said reports, it is also evident that there are houses in the vicinity of the area belonging to other villagers.</p> <p>(g) Coupled with the above facts, the area of the disputed plot itself is too less to have any meaningful agriculture on the plot unless the adjacent raiyats already have sizable area which they are using for agriculture purpose.</p> <p>(h) I also find that while the Learned Advocate Commissioner report is confined itself to the issue of adjacency, it remains silent on the issue of possession and the land use. The land use aspect, in my opinion, is an important factor in determining whether Pre-emption laws can be invoked at all in the instant dispute. No doubt, the Learned Advocate Commissioner had gone in very detailed manner about the fact as to the Pre-emptor being the adjacent raiyat. To that end, I find merit in the finding of the Learned Additional Collector that he gave more weightage to the report of the Learned</p>	

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	<p>Advocate Commissioner rather than the report of the Circle Officer in deciding the adjacency of the dispute.</p> <p>(i) However, the Learned Additional Collector should have paid attention to the primary and very basic scrutiny as to whether Pre-emption law, as defined under Section 16(3) of Bihar Land Ceiling Act, 1961, is applicable or not.</p> <p>(j) Coming to the other point where the Pre-emptor has mentioned that he has won another case involving the Revisionist's brother, it will not be possible to comment on that issue as the Pre-emptor has not submitted any papers in support thereof.</p> <p>Conclusion:-</p> <p>From the aforesaid finding, it is clear that land, being too small to be used for agricultural purposes, is intended to be used for residential purpose. Moreover, the land is in the peaceful possession of the Revisionist.</p> <p>Though the report of the Learned Advocate Commissioner says that the Pre-emptor is an adjacent raiyat whereas the report of the Circle Officer (who submitted report after the report of the Pleader Commissioner) that the Revisionist is the adjacent raiyat, does not help the case. Nor does it affect the outcome of the case as I feel that the issue</p>	



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	<p>of adjacency is irrelevant in the instant dispute where the land involved is a miniscule 6 decimals.</p> <p>To my mind, the Revenue Authorities should be very discreet in taking recourse to the Pre-emption proceeding. Pre-emption should be allowed only when it is going to serve the primary objective of Section 16 (3) of preventing the fragmentation of holding. As can be seen from the above, the disputed land itself and the lands adjoining the disputed land are spread over in three parts in which Petitioner has 6 decimals of land, his brother has 4.66 decimals of land and Pre-emptor himself has 5 decimals of land.</p> <p>Ostensibly, no purposeful agriculture can happen in this area around the disputed land.</p> <p>I must also mention here that there are houses in the vicinity of the disputed land.</p> <p>That be the case, I find that the dispute is not covered under the Pre-emption laws and the disputed land is being used for non agriculture purpose and therefore should be free from any proceeding under Section 16(3) of Bihar Land Ceiling Act, 1961. That be the case, I find that the Learned Additional Collector has ignored the vital fact that the land under dispute, being used for non agricultural purposes, is not covered under Pre-emption laws.</p>	

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	<p>Therefore, I find difficult to support the order of the Learned Additional Collector dated 11.03.2004 and same is hereby set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	