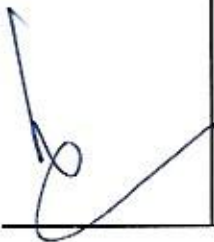



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| आदेश की क्रम सं० और तारीख 1 | आदेश और पदाधिकारी का ¹ हस्ताक्षर 2 | आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3 |
| 20.02.2017 | <div><p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p><p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. – 145/2006 Dist. - Aurangabad</p><p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p><div><div>=====</div><div><div>Arjun Sao</div><div>Versus</div><div>Smt. Yasoda Devi and 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 Dhananjay Kumar Singh</div><div>For the OP</div><div>:Shri Sandeep Patil</div></div><p style="text-align: center;"><u>ORDER</u></p><p>This is a Pre-emption matter in which a Revision application has been filed against the order passed by the Learned Additional Collector, Aurangabad on 14.04.2006 in Ceiling Appeal Case No. 05/2004.</p><p>The case was admitted for hearing on 12.03.2008 after condoning the delay. Meanwhile, the Lower Court Records took time to reach. Since then, the case remained part heard on many dates.</p><p>The case finally came up for hearing on 14.02.2017. On this date, the Petitioner was present and he himself argued his case. The Petitioner is the Purchaser. The Learned Advocate of the OP, who is the Pre-emptor, was also present and heard. Thus concluding the hearing, this order is being passed today.</p></div> | |



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| | <p>As per the Petitioner Sri Arjun Sao, arguing his own case, mentioned that he is the purchaser of the land measuring 2 katha 2 dhurs. As per him, he is an adjacent raiyat of the disputed land from three sides namely north, east and west. He purchased the land in 2003 from Jahoor Sah-son of Madar Sah for Rupees Six Thousand only.</p> <p>The Petitioner also mentioned that the land is in his possession and he is using it for agricultural purpose. Presently, he has sown wheat on the disputed land. He has filed a letter which he has written to the Circle Officer.</p> <p>I also heard the Learned Advocate of the Pre-emptor, who is the OP. As per him, the area of disputed land is only 9 decimal. He had filed a Pre-emption application before the Learned DCLR but the same was dismissed by him vide order dated 18.10.2004. Aggrieved, he filed an appeal before the Learned Additional Collector who, vide order dated 15.04.2006, allowed the appeal in the favour of the Pre-emptor.</p> <p>Thus further aggrieved, the Purchaser filed this Revision application and hence this proceeding. The Learned Advocate claims that the land is in his possession. Moreover, he has no dispute with the land purchased by the Petitioner in 2003. The dispute is concerning the land which he purchased before in 1995.</p> <p>Concluding his arguments, the Learned Advocate further mentioned that he is the adjacent raiyat. The Petitioner is no longer the adjacent raiyat as he has</p> | |

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|  | <p>purchased the land from Jahoor Sah and sold it to Satyanarayan Chauhan on 13.09.1995. Later, Satyanarayn Chauhan sold it to somebody else.</p> <p>Thus having heard both the parties and having perused the material available on record as well as the Lower Court Records, my own findings on the matter are as under:-</p> <p>(a) The disputed land is spread over three plots 949, 951 (of Khata No. 35) and Plot No. 950 of Khata No. 103 measuring an area 6 ⁹/₁₆ decimals.</p> <p>(b) The above area is so small so as to render any meaningful agriculture impossible, unless it is amalgamated to a plot of an adjoining raiyat which has a significant presence of land.</p> <p>(c) Amongst the vendor, vendee and the Pre-emptor, none is related to anyone hence nobody is a Co-sharer here. Only issue therefore is to decided on the adjacency.</p> <p>(d) Regarding the adjacency, I find that the Learned DCLR has held that the Petitioner is an adjoining raiyat in two plots Plot No. 956 and Plot No. 957. Whereas, the Learned Additional Collector has held that the Petitioner has sold off the Plot No. 957 and hence he is no longer the adjacent raiyat. However, there has been no finding with regard to Plot No. 956 in the order of the Learned Additional Collector. Therefore, it seems that Plot No. 956 is</p> | |

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| | <p>still with the Petitioner and by virtue of that position, he still is an adjacent raiyat.</p> <p>(e) It seems that the vendor Jahoor Sah sold the land to both the parties to the dispute here, namely, the Pre-emptor as well as the vendee. This is clear from the report of the Circle Officer dated 21.06.2004.</p> <p>(f) From the said report of the Circle Officer, it is also clear that the disputed plot is already hopelessly fragmented between the Petitioner and the Pre-emptor in very small pieces of plots and no plot is more than 10 decimals. From the report of the Circle Inspector, it seems there have been nine sale deeds involving the disputed plot and the adjoining plot of 957 and 956 in which either of the parties have purchased land through various sale deeds.</p> <p>(g) From the above, it is also clear that the said land and the nearby plots have been purchased and re-purchased but the area involved is not even 10 decimals at times.</p> <p>Conclusion:-</p> <p>From the foregoing findings, it is clear that the land in question is too small to enable any significant agriculture activities. Moreover, it has not been proved</p> | |

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|  | <p>beyond out that Petitioner-Purchaser is not an adjacent raiyat.</p> <p>Even though, he might have sold one plot to another person called Satyanarayan Chauhan, it appears that he is still an adjacent raiyat on account of another plot adjacent to the disputed plot.</p> <p>Even if we grant the admitted fact that land use is agricultural, as is admitted by both the parties, we cannot ignore the fact that the plot, to which disputed land belongs is already hopelessly fragmented.</p> <p>I also note with concern that the same vendor is selling the land to both the parties, namely, the vendee as well as the Pre-emptor. Therefore, I find it strange that the Pre-emptor should have chosen to file a Pre-emption application in one such small transaction where the vendor chose to sell his land not to him but to the vendee.</p> <p>I also note with concern that if the Pre-emptor is so deeply worried about the fragmentation of agricultural holdings, then why he did not file a Pre-emption application when the vendee had sold the adjacent plot of 957 to another person called Sri Satyanarayan Chauhan.</p> <p>The above only indicates two things, firstly, Sri Satyanarayan Chauhan is perhaps related to Pre-emptor in some way or the other. Secondly, the dispute between the Pre-emptor and vendee is more deep than just the Pre-emption. The State, in my opinion, should be very</p> | |

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| | <p>conservative in invoking the Pre-emption laws and intervening in a private transaction of land involving two individuals. Otherwise, there is risk of people settling their individual scores on the ground of Pre-emption laws. In the instant dispute, it is clear that the Pre-emption law has been invoked very selectively by the Pre-emptor.</p> <p>Thus considering the above facts, it seems that Pre-emptor has chosen to take recourse to the Pre-emption law very selectively, otherwise, he should have filed the Pre-emption application for Plot No. 957 as well.</p> <p>Moreover, it has also been established that the vendee still is an adjacent raiyat by virtue of his ownership of plot 956 as is appears from the order of the Learned DCLR. The Learned Additional Collector has totally ignored Plot No. 956.</p> <p>Therefore, it is clear that the vendee still continues to be an adjacent raiyat. According to this settled law of Pre-emption, if the vendee is either a Co-sharer or an adjacent raiyat, the Pre-emption fails.</p> <p>That be the case, I find that this is a needless litigation which the Pre-emptor has started over a piece of land barely 6 decimal in area. The fact that the vendee is still an adjacent raiyat has been ignored by the Learned Additional Collector, therefore, I find it difficult to support the order of the Learned Additional Collector dated 15.04.2006.</p> | |

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| | <p>I, accordingly, set aside the order of the Learned Additional Collector dated 15.04.2006 and uphold the order of the Learned DCLR dated 18.10.2004.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end; margin-top: 100px;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div> | |