


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
27.01.2017	<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. – 189 &amp; 190/1994 Dist.- Gaya</p> <p><b>PRESENT            :-        K.K. Pathak, I.A.S., Additional Member</b></p> <p>=====</p> <table><tr><td>Sachidanand Pandey</td><td style="text-align: center;">Versus</td><td style="text-align: right;">- Petitioner/ Appellant</td></tr><tr><td>Tanai Singh &amp; Others</td><td></td><td style="text-align: right;">- Opposite party</td></tr></table> <p>=====</p> <p><b><u>Appearance:</u></b></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Lalan Kumar</td></tr><tr><td>For the OP</td><td>:Shri Mrigendra Kumar</td></tr></table> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a Pre-emption matter in which a Revision case was filed against the order of the Learned Collector, Gaya dated 11.01.1994 in Case No. 21/1993. The case was time barred but was admitted on 10.05.1994. Subsequently, the case was dismissed for default on 20.06.1994.</p> <p>A Restoration Petition was filed, however, the same was also rejected by the then Additional Member Board of Revenue vide his order dated 21.09.1994. Aggrieved at this order, the Petitioner went to the Hon'ble High Court in CWJC No. 7591/1995. The Hon'ble High Court vide its order dated 30.06.2014 quashed the order</p>	Sachidanand Pandey	Versus	- Petitioner/ Appellant	Tanai Singh & Others		- Opposite party	For the Appellant/Revisionist	:Shri Lalan Kumar	For the OP	:Shri Mrigendra Kumar	
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	<p>passed by the Learned Additional Member and remanded the matter back to the Board of Revenue to decide the issue on merit.</p> <p>I also find that the Petitioner had also filed another writ CWJC No. 7735/1995 on the issue of merits of the case. In this writ, the Petitioner had challenged the order passed by the Appellate Authority (Learned Collector). In this case, the Hon'ble High Court vide order dated 04.03.1998 dismissed the writ and did not allow the matter to be remanded to the Board of Revenue. Aggrieved, the Petitioner (who is also the Pre-emptor) filed an LPA No. 507/1998 wherein the Hon'ble High Court vide order dated 09.08.2011 set aside the order of the single bench dated 04.03.1998 and remanded the matter back to the Board of Revenue.</p> <p>From the above, it is clear that the Hon'ble High Court order dated 09.08.2011 was passed earlier than the order of the Hon'ble High Court dated 30.06.2014. In the end, by virtue of both the orders, the matter stood remanded to the Board of Revenue.</p> <p>Pursuant to this remand, the Board of Revenue took up the matter again and issued notices to both the parties. The matter remained partly heard on many dates. The Lower Court Records took time to reach.</p> <p>The case finally came up for hearing on 29.12.2016. By this time the OP No. 1 has died and substitution Petition was filed. The substitution Petition was allowed on 11.01.2017 and the case was finally posted for hearing on 20.01.2017. Both the parties were heard in great</p>	

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	<p>detail and thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, who is the Pre-emptor, the whole plot (Plot No. 1451) has an area of 2.44 acres. This whole plot was sold in two parts of 1.22 acres each. Two different sale deeds were executed but the vendor and the vendee were the same. The sale deed was registered on 02.05.1992.</p> <p>The vendee is Sri Tanaya Singh (OP No. 1) and the vendor is Nirmala Kumar (OP No. 2). The vendor is the niece of the Pre-emptor Petitioner and hence the Pre-emptor claims that he is both the Co-sharer as well as the adjacent raiyat.</p> <p>Continuing his argument, the Learned Advocate of the Pre-emptor mentioned that when the sale deed was registered on 02.02.1992 (which was executed on 30.03.1990), he filed Pre-emption on 04.07.1992. However, before the Pre-emption case was filed, the vendee has gifted the land to his wife on 05.06.1990.</p> <p>The Learned DCLR allowed the Pre-emption. Aggrieved at this order, the vendee went in appeal before the Learned Collector who allowed the appeal and hence thus further aggrieved, he has come in Revision before this Court. The Learned Advocate further says that there are two Revision cases involved in the dispute, namely, case no 189/1994 and 190/1994. In the case regarding 190/1994, five plots are there, of which two are having houses and three are purely agricultural. In the case involving in Case No. 189/1994, there are 10 plots and all are purely agricultural.</p>	





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	<p>He further avers that the issue to be decided is whether the gift is sham transaction or not. It is also admitted by the Learned Advocate of the Pre-emptor that he is not in the possession but the vendee is the possession.</p> <p>I also heard the Learned Advocate of the OP, who is the purchaser. He avers that the Pre-emption is not maintainable on gift deeds as a gift was executed before the Pre-emption application was filed in the court of the Learned DCLR. The finding of the Learned DCLR that the gift deed so executed is sham transaction is without any evidence, no enquiry was done and the wife was not made party by the Pre-emptor.</p> <p>Continuing this argument, the Learned Advocate of the OP further mentioned that in case no 189/94, there are 10 plots in which in two plots (Plot No. 9910 and 9911), the vendee is an adjoining raiyat. The other plots have some orchards. In land falling in Dispute No 190/94, there are some houses in the plot. He further mentioned that he is using the entire area for houses and orchards and therefore, the land use is largely non agricultural.</p> <p>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 issue are as under:-</p> <p>(a) It is an admitted fact that the purchaser OP has transferred the entire land to his wife.</p> <p>(b) It is also an admitted fact that the Pre-emptor is an adjacent raiyat in at least some of the plots under dispute, if not all.</p>	

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	<p>(c) It is also not disproved by the OP Purchaser that the pre-emptor is a Co-sharer of the vendor. I find that the Learned Collector had held that Pre-emption is not maintainable in a gift deed and therefore allowed the appeal in favour of the OP.</p> <p>(d) The land in dispute is a substantial 2.44 acres, in which, it is admitted position that there are some houses and perhaps some orchards. However, this fact cannot be denied that a land of such a huge area cannot be used only for residential purpose and it is difficult to believe that no agricultural activity is taking place in an area of 2.44 acres. This area is too huge by Indian standards.</p> <p>(e) Nowhere, it has been established that the purchaser is an adjacent raiyat. Even in the arguments, he has not claimed that he has an adjacent raiyat. Being a co-sharer is totally out of question.</p> <p>(f) On the other hand, the Pre-emptor claims to be a co-sharer, which fact, though denied by the OP, has to be accepted given the fact that no paper has been presented by the OP that the Pre-emptor has legally separated from the vendor who is his niece.</p> <p>(g) Thus on one hand, it is established beyond doubt that the purchaser OP is neither an adjacent raiyat nor a Co-sharer. On the other hand, the Pre-emptor is certainly an adjacent raiyat in some of the plots (if not all) and also a Co-sharer.</p> <p><b>Conclusion:-</b></p>	

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	<p>From the above findings, it is clear that this land, having a huge area of 2.44 acres, cannot entirely be used for residential purposes. There may be a house or two of a raiyat who has every right to set up his house in his agricultural field. I am not inclined to grant this luxury to the Purchaser OP that entire 2.44 acres is being used for the residential purpose. Given the Indian Scenario in our villages, 2.44 acres land is too big an area to be used solely for residential purpose.</p> <p>Coupled with this fact, it is also noted that the Revisionist Pre-emptor is both a Co-sharer and an adjacent raiyat (in some plots) whereas the Purchaser OP is neither a Co-sharer nor an adjacent raiyat.</p> <p>The sheer size of the plot therefore attracts Pre-emption laws as defined under Section 16 (3) of Bihar Land Ceiling Act, 1961.</p> <p>I also find that the purchaser had transferred the land to his wife. Whether or not this was done to defeat the Pre-emption Law is the issue to be decided. Were this court to allow all gift deeds so made between the family members, then the utility of Section 16(3) shall cease to exist. Every purchaser, in order to defeat the Pre-emption Law, will gift away the land so purchased to his spouse, son, daughter etc. Moreover, a gift which is executed immediately after the purchase lends suspicion.</p> <p>If significant number of years had passed between the purchase and gift, then malafide motive cannot be attributed. However, if the purchase and gift is immediate and between the family members, then it can be reasonably</p>	



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	<p>held that this was a sham transaction. In the instant case the land was purchased on 30.03.1990 by the purchaser and was gifted in two months to his wife. Therefore, this indicates that the transaction was done with the motive to defeat the Pre-emption Laws.</p> <p>That be the case, I find it difficult to support the logic extended by the Purchaser OP. Moreover, it is difficult for this Court to believe that the entire 2.44 acres of land is being used for residential purposes. Moreover, this argument of residential use was never placed before the Learned Lower Courts by the Purchaser OP. It was perhaps an afterthought when this new ground was raised before this Revision Court for the first time.</p> <p>Hence for reasons mentioned above, I allow the Pre-emption. Accordingly, the order passed by the Learned Collector, Gaya dated 11.01.1994 is hereby set aside.</p> <p>Revision allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">   <b>Dictated &amp; Corrected</b>   <b>K.K.Pathak</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> <div style="text-align: center;">   <b>(K.K.Pathak)</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> </div>	