

The Case was admitted for hearing on 03.09.2005 and the proceeding of the lower court was stayed. The case was dismissed for default on 17.07.2007 as both the parties remained absent for many dates. Subsequently, a Restoration Petition was filed and the case was restored on 31.01.2008. Since then, the matter remained part heard on various dates. The LCR took time to reach. The OP (the Pre-emptor) has filed Hazri on various dates in


the early stages of the case but subsequently, he remained continuously absent. The finally the Case was put up for hearing on 21.12.2016 where none of the parties were present.


The case was deferred for final hearing on 26.12.2016 on which date the Learned Advocate of the Revisionist was present and he was heard in great detail. However, the Learned Advocate of the Pre-emptor remained absent. This case of Pre-emption is going on last 12 years and hence no further dates need be given. It may be noted that the OP Pre-emptor is aware of the proceeding and he has also filed his rejoinder which was perused by me. Thus the hearing was concluded on 26.12.2016 and this order is being passed today.


As per the Learned Advocate of the Revisionist who is also the purchaser, he had purchased the land from the vendor OP No 4. Against this purchase, the Pre-emptor OP No. 3 (Sri Ayodhya Mishra, now deceased) had filed a Pre-emption Application before the Learned DCLR. The Learned DCLR vide order dated 22.01.2004 allowed the Pre-emption Application. Aggrieved by the order, the Revisionist approached the Learned Additional Collector who vide his order dated 14.08.2004 rejected the appeal and hence the Revisionist has filed this Revision Application.

He mentioned that the OP No. 3 and OP No. 4 are relatives. The Revisionist admits that he is not related to either OP No. 3 or OP No. 4. He further mentions that neither he nor the Pre-emptor is a Co-sharer or an adjacent raiyat.

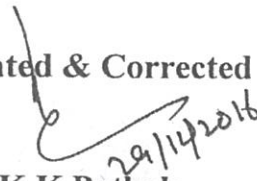

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आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>As per the Learned Advocate, the total land in question about 20 decimals, of which 10 decimals was sold to him (which is the disputed land) and another 10 decimals were sold by the same vendor (OP No. 4) to one Sri Om Prakash Yadav who has built his house on that land.</p> <p>The Learned Advocate further mentioned that in the sale deed executed by him on 14.06.2002, the khasra No. was wrongly entered and the name of Pre-emptor was also mentioned wrongly in the sale deed. On learning this mistake, he has executed the rectified sale deed on 22.08.2002. As per him, the Learned DCLR did not consider this rectification deed in his order. He further argues that the land in question is a homestead land and several houses in and around the disputed plot has come up. The Revisionist has submitted the names of people having houses in the area in his written notes of arguments.</p> <p>I also perused the rejoinder filed by OP Pre-emptor Sri Ayodhya Mishra. He has largely relied on the report of the Learned Advocate Commissioner and claims that the Learned Advocate Commissioner has held that the Pre-emptor is a Co-sharer and an adjacent raiyat.</p> <p>Having heard the Learned Advocate of the Revisionist and having perused the Lower Court Records as well as other material available on record, my own findings are as under :-</p> <p>(a) I find that the Learned DCLR has ignored a vital aspect as to whether a Pre-emption proceeding at all lies in the instant dispute.</p> <p>The disputed land has a very small area of</p>	

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	<p>10 decimals. Any agriculture is not possible in such a small area.</p> <p>(b) I also find that the Revisionist had executed the rectified sale deed during the pendency of the Pre-emption proceeding before the Learned DCLR and hence it is rightly covered under Doctrine of Lis pendence as per Section 52 of the transfer of property Act, 1882. However, the issue at hand is not whether the rectification sale deed was in order or not. The issue at hand is whether Section 16 (3) of the Bihar Land Ceiling Act, 1961 (popularly called the Pre-emption law) can be applied in the instant dispute or not.</p> <p>(c) It is evident that the purpose of purchase the small piece of land by the Revisionist is to construct a house and that is why the Learned DCLR vide his order dated 25.02.2003 directed the Revisionist not to construct any house on the disputed plot. I also perused the report of the Learned Advocate Commissioner, Sri Manish Kumar Sinha who submitted his record in the Court of the Learned DCLR on 16.09.2003. The Learned Advocate Commissioner has confined himself as to whether the Pre-emptor is Co-sharer or not. As per the report, it appears that the Pre-emptor is indeed the</p>	

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	<p>Co-sharer of the vendor and to that extent the averment made by the Petitioner that the Pre-emptor is neither a Co-sharer nor an adjacent raiyat is not correct. The Learned Advocate Commissioner had ignored the fact whether the disputed land has, in its vicinity, any houses or not. All he mentioned is that the lands to the east and south of the survey plot 239 is culturable. He however mentioned that there is a road on two sides of this plot from north and west. Even if it is assumed that the Pre-emptor is also an adjacent raiyat, as reported by the Learned Advocate Commissioner, it does not radically alter the fact that the land has been purchased for the purpose of homestead.</p> <p>(d) In fact, the instruction issued to the Learned Advocate Commissioner by the Learned DCLR was confined to find out the area in possession of Pre-emptor and whether he is Co-sharer or not. It was never included in the terms of reference made to the Learned Advocate Commissioner to find out whether the land is being used for agricultural or residential purposes.</p> <p>(e) I also note that the Revisionist had filed his objection Petition to the report of the Learned Advocate Commissioner.</p>	

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	<p>(f) If we were to apply Pre-emption laws on such small pieces of land which are being purchased for the purposes of homestead, then nobody would be able to purchase any land for residential purpose. The purpose of Section 16 (3) of Bihar Land Ceiling Act is to prevent fragmentation of agriculture holdings. This law is not applicable to a person who might wish to purchase a small piece of agriculture plot and convert it into his personal homestead. Section 16 (3) does not bar any person to buy land for homestead purposes.</p> <p>(g) I have also perused the order passed by the Learned Additional Collector who has only confined himself to the report of the Learned Advocate Commissioner which only says that the Pre-emptor is a Co-sharer and an adjacent raiyat. He too has not dwelt into the aspect that Pre-emption Proceeding on homestead lands or lands purported to be used for homestead are not applicable.</p> <p>(h) I also find that the two parties have fought with each other and matter has gone to the police. A proceeding under Section 107 CrPC was initiated against both the parties and the Revisionist was made to file a bond for maintaining peace for 1 year. This proceeding was drawn in the year 2005.</p>	

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	<p>Conclusion:-</p> <p>From the above findings, it is abundantly clear that though the Pre-emptor is an adjacent raiyat but the fact of the matter remains that Pre-emption Proceeding do not lie in residential area or in plots purchased for residential purposes. The area purchased by the Revisionist is only 10 decimals which cannot be used for agricultural purposes and hence the Pre-emption Proceeding should not have been initiated by the Learned Court of DCLR in the first place.</p> <p>Both the Lower Courts have confined their observation to the fact that the Pre-emptor is an adjacent raiyat. They have ignored the vital point that the disputed plot and the vicinity are purely residential and any meaningful agriculture cannot take place. That be the case, I hereby the set aside the order passed by the Learned Collector as well as the Learned DCLR, Aurangabad.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="395 1332 778 1624"> <p>Dictated & Corrected  K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="837 1288 1228 1590"> <p> (K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	