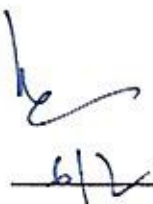


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
06.02.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. – 27 & 28/2015 Dist. - Patna</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Nageshwar Prasad Singh & Others - Petitioner/ Appellant Versus The Collector, Patna & Others - Opposite party =====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist :Shri Nand Kishore Prasad Sinha For the OP : For the State : Shri Nirmal Kumar, Special G.P.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision application was filed on 06.07.2015 in pursuance to the order dated 30.04.2015 passed by the Hon'ble High Court, Patna in CWJC No. 7815/1996. These are two analogous matters arising out of similar orders, therefore, two Revision Cases No. 27/2015 and 28/2015 are being dealt with together.</p> <p>For the background of the matter, it may be noted that the Board of Revenue had earlier adjudicated this matter on 23.02.1996 and had dismissed the Pre-emptor's case. Aggrieved at this order, the Pre-emptor had approached before the Hon'ble High Court who, vide order dated 30.04.2015, remanded the matter back to the Board of</p>	



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	<p>Revenue to consider afresh whether the Pre-emptor is an adjoining raiyat or not.</p> <p>The Hon'ble High Court also advised the Pre-emptor to file an affidavit as to how they propose to divide the land amongst themselves in case they succeed in the matter.</p> <p>The Pre-emptor is yet to file such an affidavit before this Court. However, the hearing was concluded on 25.01.2017 wherein the Learned Advocate of the Pre-emptor was heard in detail. The Learned Advocate of the OP was absent but the OP himself was present and was heard. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, who is also the Pre-emptor, the dispute is with regard to Plot No. 2122 of Khata No. 70 and having an area of 25 decimals. This land belongs to Sri Mahanand Singh who sold half portion to one vendee Smt. Phulraj Devi and other half to Smt. Rashmi Devi. The sale deed was executed on 29.08.1983.</p> <p>After the sale deed was executed, the Pre-emptor filed an application before the Learned DCLR who allowed his application. The Learned DCLR, vide his order dated 14.12.1984, held that the Pre-emptor is an adjacent raiyat. Aggrieved at this order, the OP went in appeal and the Learned Collector, Patna allowed the appeal vide his order dated 05.09.1994 holding that the Pre-emption is a weak</p>	

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	<p>right. The Learned Collector, as per the Learned Advocate, did not give any findings of his own.</p> <p>Aggrieved at the order of the Learned Collector, the Pre-emptor approached the Board of Revenue in Revision. However, the Board, vide order dated 23.02.1996, dismissed the Petition. Aggrieved at this order, the Pre-emptor went to the Hon'ble High Court who remanded the case back to the Board of Revenue.</p> <p>Concluding his arguments, the Learned Advocate of the Pre-emptor- Revisionist mentioned that he is not related to the vendor or the vendee. While admitting that the land is not in his possession, he says that he wants the land to be used for agricultural purposes.</p> <p>I heard the OP. He confirmed that the land is in his possession and he is presently using it for agricultural purposes.</p> <p>Having heard both the sides and having perused the material available on records, my own findings on the matter are as under:-</p> <p>(a) I find that the then Additional Member, Board of Revenue, vide his order dated 23.02.1996, rejected the Pre-emptor's case on the ground that Pre-emptor has not been able to prove that he is an adjacent raiyat because the sale deed does not mention his name. Additionally, he held that since there are three persons jointly claiming to be the</p>	

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	<p>Pre-emptor, they should have to individually show that they are the adjacent raiyats. Even the Hon'ble High Court in its observation dated 30.04.2015 have desired that the Pre-emptor should file an affidavit as to how they propose to divide the land amongst themselves. The said affidavit has not been filed before this Court in spite of the specific direction on 25.01.2017.</p> <p>(b) It is an admitted fact that the Pre-emptor is not a Co-sharer to the vendor or the vendee. Hence, the only issue to be adjudicated is whether the Pre-emptor is an adjacent raiyat or not.</p> <p>(c) I have carefully gone through the order of the Learned DCLR as to find out the basis on which he has held the Pre-emptor to be an adjacent raiyat. I find that the Learned DCLR has held that the sale deed mentioned that the Pre-emptor is an adjacent raiyat. However, from the boundary as explained in the order of the Learned DCLR has not come out very clearly that the sale deed mentioned the Pre-emptor as a boundary raiyat. In fact, contrary is the evidence which suggests that the sale deed does not mention that the Pre-emptor is a boundary raiyat.</p> <p>(d) I find that the instant land under dispute was already held mortgage in favor of the vendees. However, due to lack of any evidence provided by the OP, the Learned DCLR did not give any</p>	

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	<p>waitage to this aspect. To that extent, the Learned DCLR was correct in not giving any importance to this argument of the OP.</p> <p>(e) In fact, none of the parties have given any evidence to suggest that they are the adjacent raiyats. In the Revision application filed by the Revisionist, he has not even cared to enclose the copy of the sale deed which he is proposing to challenge. This lends enough suspicion in the mind of this Court as perhaps the document contains some indication that the land was already a part of a mortgage arrangement between the vendor and vendee. In fact, perhaps, the sale deed was a culmination of that arrangement.</p> <p>(f) It is also an admitted position that the OP is in the possession of the land and not the Pre-emptor. This fact has already been admitted by the Pre-emptor.</p> <p>(g) Therefore, I find that the Learned DCLR has not quoted any paper to suggest how he came to the conclusion that the Pre-emptors are the adjoining raiyat. In fact, the Learned DCLR has explained that the preemptor has submitted some papers but what are these papers, his order is does not explain why he is relying on these papers. The sale deeds that the Learned DCLR has relied upon are totally unconnected third party transactions in which the Pre-emptor has been shown as the adjoining raiyat.</p>	

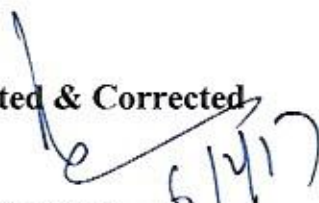

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आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में दिपण्णी तारीख सहित 3
	<p>The sale deeds that have been quoted as the evidence in the Learned DCLR's order is the sale deed no 5841 dated 10.11.1981 in favor of Shail Devi. Another such sale deed is sale deed no 4710 dated 11.07.1981. However, I don't see this as a reliable evidence to suggest that the Pre-emptor is an adjoining raiyat of the disputed plot. The two sale deeds mentioned above concern Plot No. 2140 and 2123 respectively. The plot in dispute here is 2122. Just because the Pre-emptors has purchased these two plots do not ipso facto make them an adjacent raiyat of Plot No. 2122.</p> <p>(h) Moreover, if any person is in the occupation of Plot No. 2122, before the Pre-emptors purchased the aforementioned sale deed, then the Pre-emption case becomes weak. Here the argument of the OP that he has been holding the possession of this land since long gains credence, however, the OP has not submitted any evidence before the Learned DCLR.</p> <p>(i) Thus to my mind, none of the parties have presented any credible documents to support their case.</p> <p>(j) Moreover, I also note that the preemptor has not even made the vendees namely Smt. Phulraj Devi and Rashmi Devi as the party in the Revision application.</p> <p>(k)</p>	

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	<p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the limited issue which was to be adjudicated was regarding the adjacency of the Pre-emptor. The order of the Learned DCLR dated 14.12.1984, vide which he had held that the Pre-emptor is an adjacent raiyat, is not based on documents which can be called reliable. Any sale deed with respect to any other plot, if mentions the Pre-emptor as an adjacent raiyat, cannot be relied upon.</p> <p>It may or may not ultimately prove that the Preemptor is an adjacent raiyat or not. What is of extreme importance is the sale deed involved in the disputed plot and which is under challenge. The Preemptor must have enclosed the copy of the sale deed in his Revision application. In fact, from the perusal of the order of the Learned DCLR, I get an indication that the Pre-emptor had not enclosed the copy of the disputed sale deed before the Learned DCLR also otherwise he would have mentioned the sale deed Number of the document under challenge.</p> <p>The inability of the Pre-emptor to rely on the sale deed of the disputed plot itself indicates that the sale deed of the disputed plot was naturally not mentioning his name as the adjacent raiyat. Therefore, I would find it difficult to support the findings of the Learned DCLR wherein he had held that the Pre-emptor is an adjacent raiyat.</p>	

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	<p>At the same time, the OP too has not been able to give any documents with regard to fact that this land was part of a mortgage arrangement between him and the vendor.</p> <p>That be so, it is clear that none of the parties have any documents to prove what they are saying. In such circumstances, it is prudent on the part of the Revenue Authorities not to interfere in any transaction between two private individuals. State, under the garb of the Pre-emption law as define under Section 16 (3) of Bihar Land Ceiling Act, 1961 should not stop a land deal where the preemptor case has not been proved beyond doubt.</p> <p>In that view of the matter, I find it difficult to support the order of the Learned DCLR, or interfere with the order of the Learned Collector.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <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>	