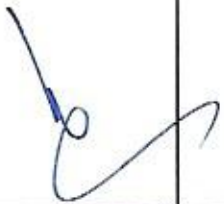



आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का <sup>1</sup> हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
24.01.2017	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.:- 68 &amp; 69/2006 Dist.:- Darbhanga</p> <p style="text-align: center;">PRESENT        :-    K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table style="width: 100%; border: none;"><tr><td style="width: 60%;">Braj Kishore Yadav and Others</td><td style="width: 40%; text-align: right;">- Petitioner/ Appellant</td></tr><tr><td style="text-align: center;">Versus</td><td></td></tr><tr><td>Rajeshwar Yadav and Others (Substituted by Yogendra Yadav)</td><td style="text-align: right;">- Opposite party</td></tr></table> <p>=====</p> <p><b><u>Appearance:</u></b></p> <table style="width: 100%; border: none;"><tr><td style="width: 50%;">For the Appellant/Revisionist</td><td style="width: 50%; text-align: right;">:Shri Vashudev Ram</td></tr><tr><td>For the OP</td><td style="text-align: right;">:Shri Girish Chandra Jha</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 application was filed on 07.04.2006 against the order passed by the Learned Additional Collector, Darbhanga in Ceiling Case No. 5/2003. Due to continued absence of both the parties concerned, the case was dismissed for default on 13.01.2010. Subsequently, a Restoration Petition was filed and the case was restored on 17.02.2011.</p> <p>Since then, the case remained part heard on many dates. Another analogous case namely 69/2007 was amalgamated with this case.</p>	Braj Kishore Yadav and Others	- Petitioner/ Appellant	Versus		Rajeshwar Yadav and Others (Substituted by Yogendra Yadav)	- Opposite party	For the Appellant/Revisionist	:Shri Vashudev Ram	For the OP	:Shri Girish Chandra Jha	
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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 टिप्पणी तारीख सहित 3
	<p>Again on 19.05.2011, the case was dismissed for default for the second time. A Restoration Petition was filed and then the case was restored the second time 29.09.2011.</p> <p>Finally, the case came up for hearing on 10.01.2017 where the Petitioner was absent but the OP No. 3, who is the Pre-emptor, was present. The case was adjourned with the observation that if any party is absent on the next date, the order will be passed ex parte.</p> <p>On 20.01.2017, the case again came up for hearing where again, the Petitioner revisionist was absent. However the Learned Advocate of the OP No. 3 was present and was heard in great detail. Petitioner, it may be noted, has been continuously absenting himself for long. This was perhaps the reason why the case was earlier dismissed for default twice. That be the case, this Court finds no reason to adjourn the matter any further and accordingly, this order is being passed today.</p> <p>As per the Learned Advocate of the OP, he is the Pre-emptor in the instant dispute. The disputed Plot No. 426 having an area of 4 katha 2.5 dhur was sold through two different sale deeds on same date and between the same parties. The vendor is Sri Mohan Yadav and the vendee is Sri Brajkishore Yadav.</p> <p>The Learned Advocate of the OP says that he is the adjacent raiyat as well as the Co-sharer. In his support, he mentioned that Theethar Yadav, the original land holder</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 टिप्पणी तारीख सहित 3
	<p>had two sons namely Ramphal Yadav and Rajeshwar Yadav. While the vendee purchased the land from vendor Madan Yadav who purchased the land from Ramphal Yadav, the Pre-emptor are the sons of Sri Rajeshwar Yadav therefore, they are the Co-sharers.</p> <p>As per the sale deed, the Learned Advocate mentioned, the name of Rajeshwar Yadav appears in north and south of the disputed plot and therefore the Pre-emptor being his son is the adjacent raiyat.</p> <p>On this ground, he filed a Pre-emption application before the Learned DCLR who first passed an order 22.02.2002 rejecting his Pre-emption application. However subsequently, he allowed the Pre-emption application and reversed his own order on 23.03.2002. However again on 16.06.2003, the Learned DCLR again reversed the order dated 23.03.2002 and made the order dated 22.02.2002 effective.</p> <p>Thus aggrieved, the OP went to the Court of the Learned Additional Collector who allowed the Pre-emption.</p> <p>Further aggrieved by the Learned Additional Collector, the vendee purchaser has come before the Revision Court. And hence the present proceeding.</p> <p>The Learned Advocate of the OP finally concluded his arguments that though the land is not in his possession, it is presently lying <i>parti</i> and he plans to use it for agricultural purposes. He further points out that the</p>	


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आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 4 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>vendor and vendee are not related whereas the he is related to the vendor as well as an adjoining raiyat.</p> <p>The Petitioner's case is that he is a member of armed forces and who has constructed a thatched hut on the disputed land and is living therewith along with his family members. As per the Petition of the Revisionist, it also appears that the Petitioner lost his old house due to floods and hence purchased this land for the construction of a house. He also mentioned that the Pre-emptor did not file a Pre-emption case in the year 1973 when the said Sri Ramphal Yadav sold the same plot to Madan Yadav, who is the vendor to the Revisionist.</p> <p>Having heard the Learned Advocate of the OP and having perused the material available on record as well as Lower Court Records, my own findings on the matter are as under:-</p> <p>(a) I find that the Learned DCLR has passed three orders in this dispute. One order is dated 22.02.2002. Another order is passed on 23.03.2002 by the same officer. The third order passed on 16.06.2003 is passed by the Learned SDO who was also holding the charge of the Learned DCLR.</p> <p>(b) In the first order dated 22.02.2002, the then Learned DCLR rejected the Pre-emption application on the ground that both the vendee and Pre-emptor are adjoining raiyats. He also held that no Pre-emption application was filed by the Pre-</p>	


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आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 5 2	आदेश पर की गई कार्रवाई के बारे में दिखानी तारीख सहित 3
	<p>emptor when the same land was sold by khatiani raiyat to the vendor in 1973.</p> <p>(c) A month later, the Learned DCLR revisited his earlier order dated 22.02.2002 wherein he allowed the Pre-emption on the ground that the Pre-emptor has submitted a copy of the khatian claiming that he is an adjacent raiyat and hence the Learned DCLR allowed the Pre-emption application.</p> <p>(d) To my mind, the second order dated 23.03.2002 is quite a surprising order on two counts :-</p> <ol style="list-style-type: none"> <li>i. The Learned DCLR is not competent to review his own order and therefore the subsequent officer who held the charge of the Learned SDO (along with the charge of DCLR) vide his order dated 16.06.2003, rightly held that since Learned DCLR cannot rescind/review his own order, therefore, the second order dated 23.03.2002 is withdrawn and the first order dated 22.02.2002 remains in force. This also means that the Pre-emptor lost the case before the Learned DCLR.</li> <li>ii. Even if the Learned DCLR wishes to review his own order, it would have been appropriate for him to issue</li> </ol>	

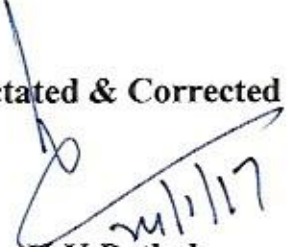

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का <sup>6</sup> हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>notices to both the parties and then take a view. This too was not done.</p> <p>iii. Moreover, the finding by the Learned DCLR in his second order dated 23.03.2002 (that the Pre-emptor is an adjacent raiyat) is similar to his finding in his first order dated 22.02.2002 when he had already held that both the Pre-emptor and the OP are the adjacent raiyats. Therefore, there was nothing new which would enable the Learned DCLR to change his mind suddenly within one month. Hence, the second order was grossly illegal and suspicious.</p> <p>Therefore, I tend to agree with the order of the Learned SDO cum DCLR dated 16.06.2003 that the Learned DCLR has no power to review his own decision. Moreover, the second order dated 23.03.2002 was passed in a suspicious manner which can be called mala fide at best.</p> <p>(e) It is important to note that the intended use of the disputed plot is residential. Moreover, the land is in possession of the Revisionist, which is a fact admitted by the Pre-emptor also.</p> <p>(f) An important aspect of the whole dispute is that the Pre-emptor has not given any justification as to why he did not object when Ramphal Yadav</p>	



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	<p>(khatiani raiyat) sold the land to Madan Yadav in 1973. And why the Pre-emptor suddenly discovered his right when the said Madan Yadav sold the land to the Revisionist in 2001.</p> <p>(g) Coming to the order passed by the Learned Additional Collector, I find that the Learned Additional Collector has dealt the matter entirely in a technical manner by going through the facts mentioned in the sale deed. The sale deed mentioned the land to be irrigated. Hence, the Learned Additional Collector felt that this land cannot be used for residential purpose. This logic is lopsided and cannot be supported. Any sale deed only mentions the nature of the land as appearing in the khatian. It does not mean that in a irrigated land, a portion of the plot cannot be carved away purely for the residential purposes.</p> <p>(h) Furthermore, the Learned Additional Collector did not apply his mind to the non filing of pre-emption application when the land was first sold to Madan Yadav in 1973.</p> <p><b>Conclusion:-</b></p> <p>From the aforementioned findings, it is clear that the Pre-emptor has not been able to refute the point that the land is in possession of the Revisionist and he has a small house over the said land.</p>	

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	<p>Nor the Pre-emptor has been able to convince this Court as to why he did not file a Pre-emption application in 1973 when his father's brother Sri Ramphal Yadav sold the land to Sri Madan Yadav who then, in turn, sold the land to the Revisionist in 2001.</p> <p>The Learned Additional Collector did not apply his mind to the above important issues and went about dealing the Pre-emption issue purely on the basis of the sale deed which merely mentioned the detail of any land as mentioned in the khatian.</p> <p>To my mind, the Revenue Authorities must be little hesitant in invoking Pre-emption laws as defined under Section 16(3) of Bihar Land Ceiling Act, 1961. Moreover, in the instant case the Revisionist himself is an armed forces personnel who wanted to buy a small land for residential purposes on a small piece of plot measuring 4 kathas.</p> <p>If we keep invoking Pre-emption laws under Section 16(3) on every small transaction of land, then we will be losing the larger picture and the objective of preventing the fragmentation of large agriculture holdings.</p> <p>In the instant dispute, since the land is primarily to be used for non agricultural purpose and the fact that the Pre-emptor chose to file a Pre-emption application only against the Revisionist and not when the said land was sold to Sri Madan Yadav, itself renders the case of Pre-emptor very weak. The objective of Section 16(3), if we can say</p>	



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	<p>that, was defeated in 1973 itself. So under no stretch of imagination, the same can be held in 2001.</p> <p>That be the case, I find difficult to agree to the case of the Pre-emptor. Accordingly, the order of the Learned Additional Collector dated 16.01.2006 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;">   <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>	