आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित
	1 2	3

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.:- 71/2000
Dist.:- Vaishali

PRESENT : - K.K. Pathak, I.A.S., Additional Member

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Smt. Chaiti Devi - Petitioner/ Appellant

Versus

Arjun Bhagat & Others - Opposite party

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Appearance:

For the Appellant/Revisionist : Shri Sachchidanand Choudhary
For the OP :Shri Subodh Prasad

ORDER

17.01.2017

This is a Pre-emption Revision case filed against the order of the Learned Additional Collector, Vaishali dated 24.07.1999 in Ceiling Appeal Case No. 11/1998-99. The Hon'ble Member, Board of Revenue vide order dated 06.05.2000 did not admit the case and dismissed the matter.

Aggrieved at this order, the Petitioner filed an LPA in the Hon'ble High Court No. 1080/2004 arising out of CWJC No. 7898/2000. In the said LPA, vide order dated 08.09.2011, the Hon'ble High Court remanded the matter back to the Board of Revenue for passing a detailed order within a period of six months.

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आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित
	2	3

Since then, the case remained part heard on many dates. Finally, the case came up for hearing on 13.01.2017 where the Petitioner and the OP were heard in detail. Thus, concluding the hearing, this order is being passed today.

As per the Learned Advocate of the Petitioner, who is also the purchaser, this land was purchased in 1993 and it was registered in 1997 and since then, he is in possession. He further mentioned that neither the vendor nor the vendee or the Pre-emptors are related to each other. Hence, there are no Co-sharers and only issue to be decided is of adjacency.

The Learned Advocate further avers that the area involved is only 4 kathas which he purchased for the purpose of constructing a house. There are some other houses in the vicinity also.

The Learned Advocate further mentioned that the original area of disputed Plot No. 295 was 8 katha. Out of that, vendor sold 4 katha to him from the western side. The eastern half was sold to his brother. The Pre-emption proceeding started against my brother too and it was dismissed for default by the Divisional Commissioner to the disadvantage of my brother.

Regarding his case, when the Pre-emption application was filed before the Court of the Learned DCLR, the Learned DCLR allowed the application on 14.09.1993. Aggrieved by the order of the Learned DCLR, he went in appeal where he lost.

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आदेश की क्रम सं० और तारीख	3 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	Further aggrieved, the Petitioner approached before the Board of Revenue who rejected his Revision application on 06.05.2000 where upon he approached the Hon'ble High Court and Hon'ble High Court remanded the matter back to the Board of Revenue and hence this proceeding. He further avers that he is a landless person wanting to construct a house on the disputed plot hence Pre-emption should be allowed in this matter. The Learned Advocate of the OP was also heard in detail. The OP is the Pre-emptor in the instant proceeding. He draws the attention of this Court to an order passed by the then Additional Member, Board of Revenue on 19.03.2016 where the case was dismissed as both the parties were absent on many dates. He further says that the Petitioner is not a landless lady. Her husband and father have houses in the same village. The disputed land is not residential but agricultural land. He also mentioned that he is in the possession of all the 8 katha of the land. Moreover, the Revisionist is not an adjacent raiyat and hence the Revision Petition is fit to be dismissed. Having heard the Learned Advocate of the both the sides and perused the material available on record, the written note of arguments as well as the Lower Court Records, my own findings on the issue are as under:- (a) The instant case was first disposed of by the Hon'ble Member of Board of Revenue on 06.05.2000 where the Hon'ble Member had noted	

आदेश की क्रम सं0 और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	that the disputed land is not being used for homestead purpose and local inquiry had confirmed this. The basis of this observation was not given by the Hon'ble Member and therefore the order was quashed by the Hon'ble High Court vide its order dated 08.09.2011 and remanded the matter back to the Board of Revenue. Nor the Hon'ble Member had given the source of the local enquiry which had confirmed that the land use is agricultural. (b) The total area involved is about 8 kathas between the two sale deeds involving the Petitioner and her brother-in-law. This comes to about 35 decimals land which is not sufficiently large but enough to carry on some agricultural activity under the Indian milieu. (c) It is also mentioned by the Revisionist that the house of the Revisionist stand on the disputed plot. The Khaparaposh house was also the subject matter of dispute between the two parties resulting in Criminal Case been filed by the Revisionist against the OP at the local Police Station. As per the report filed, it appears that the Petitioner had some kind of structure on the disputed plot which was burnt down by the OPs. However, a view can be held that this was an attempt by the Revisionist to put up a semblance of structure to give the plot a residential colour.	

आदेश की क्रम सं0 और तारीख	5 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	(d) The Learned DCLR has mentioned that the report of the Circle Inspector was called for but there is no report of the Circle Inspector available on the record. What is available is the report of the Police Station. (e) As per the report of the Police Station submitted to the SP Hajipur on 12.04.1998, it appears that there was no house on the plot. In order to defeat the Pre-emption proceeding before the Court of the Learned DCLR, the Petitioner had deliberately setup a temporary bamboo structure and then set it on fire to blame the OP. (f) It is also evident the Revisionist is not a landless person as proven by the land records as well as the report of the Police Station. (g) I also find that the other half of the disputed plot sold to Sri Ram Prasad Das, who is the brother in law in Petitioner and the Pre-emption case was filed by the OP against him as well. The case was finally lost by Sri Das and the Pre-emptor won the case in the Court of the Hon'ble Divisional Commissioner, Muzaffarpar. The Hon'ble Commissioner vide order dated 10.06.2013 had dismissed the vendee's case in the favour of the Pre-emptor. The order was passed on merits and the case was not dismissed for default as was mentioned by the Learned Advocate of the Revisionist.	

आदेश की क्रम सं0 और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित
	2	3

(h) Therefore, it can be held that the Pre-emptor has won the case with regard to the eastern half of the plot measuring 4 katha which was sold by the same vendor to the Revisionist's brother.

(i) It has also been established that the Pre-emptor is an adjacent raiyat from the eastern side of the eastern half of the plot. Now that the Revisionist's brother has also lost the case, the Pre-emptor becomes a direct adjacent raiyat to the western half of the disputed plot.

(j) Notwithstanding above, if we take the entire 8 katha of land as the disputed plot sold to the Revisionist and his brother, it is proved beyond doubt that the OP Pre-emptor is the adjacent raiyat to the combined Plot No. 295 having a total area of 8 kathas.

Conclusion:-

From the above findings, it is clear that Revisionist is not a landless person and there was a conscious attempt made by the Revisionist to erect a bamboo structure on the disputed plot to give it the shape of the residential use in order to avoid the Pre-emption law as defined under Section 16 (3) of the Bihar Land Ceiling Act, 1961. This has been evidently established in the police report which is part of the record.

It has also been established that the Pre-emptor OP is the adjacent raiyat to the combined Plot No. 295, having an area of 8 katha, which is the disputed plot.

आदेश की क्रम सं० और तारीख	7 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	Furthermore, it is clear that the Revisionist's brother (who was sold 4 kathas from the disputed plot) had lost the case in the favour of Pre-emptor in the Court of Divisional Commissioner. That be the case, I see no reason to interfere with the order of the Learned Lower Courts. I accordingly uphold the order of the Learned Additional Collector as well as the order of the Learned DCLR. Revision Dismissed. **Dictated & Corrected** 17/1/17 **K.K.Pathak** **Additional Member** **Board of Revenue, Bihar.** 17/1/17 **(K.K.Pathak)** **Additional Member** **Board of Revenue, Bihar.**	