



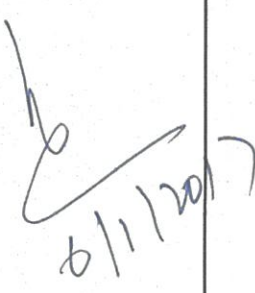


आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>Finally, the hearing was concluded on 30.12.2016 wherein both the parties were present and were heard in great detail.</p> <p>As per the Learned Advocate of the Revisionist, a Pre-emption application was filed by the Pre-emptor in the Court of the Learned SDO who by an order dated 28.10.2004 held that the Revisionist is neither a Co-sharer nor an adjacent raiyat and hence allowed the Pre-emption Application. Aggrieved at this order, the Revisionist appealed before the Court of the Learned Collector who too, by an order dated 11.03.2005 rejected the appeal and upheld the order of the Learned SDO.</p> <p>As per the Learned Advocate of the Revisionist, the land in dispute is only 14 dhurs. He is a landless person and purchased this land in 2003 for construction of house. The land is in his peaceful possession and has a house also. He shows a photograph of the house on the plot. The Learned Advocate further mentioned that he has filed a Supplementary Affidavit to prove that he is a landless person. In his Supplementary Affidavit, the Petitioner has explained how he came to own his father's land and how these were sold to various persons. He also mentions that he is holder of BPL card and the BPL health card.</p> <p>The Learned Advocate also admitted that he is neither a Co-sharer nor an adjacent raiyat to the disputed land. And he claims that since the land is residential, the Pre-emption claim does not lie.</p> <p>On the other hand, the Learned Advocate of the Pre-emptor has vehemently denied the averments made by</p>	

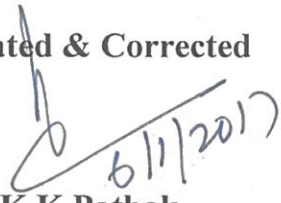
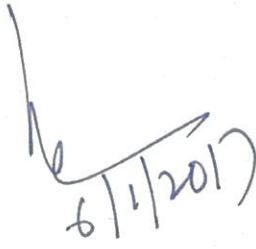
आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 3 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>the Revisionist. He draws the attention of the Court to Page 7 of the Supplementary Counter Affidavit where he mentioned that house no 38 is the house of the Revisionist where he lives with at least 12 people which shows that the Revisionist is not a landless person but has a big house. He further draws the attention of the Court to Page 11 of the same Supplementary Counter Affidavit showing the copy of khatian showing that there is good chunk of land in the name of the Revisionist.</p> <p>Furthermore, he mentions the schedule of family partition of property of the Revisionist showing that he has land properties. This abundantly proves that the Revisionist is not a landless person as claimed by him. The Revisionist therefore has mentioned all these things just to frustrate my right of Pre-emption. The Learned Advocate of the OP has also filed a Supreme Court Judgement in his support.</p> <p>Finally, the Learned Advocate of the OP mentioned that he is an adjacent raiyat as per the sale deed which also says that the land is agricultural in nature. He further denies the contention of the Revisionist that the Revisionist is in possession of the land and has a house in the plot.</p> <p>Thus, both the parties concluded their hearings. I have perused the material available on the record and the affidavit, Supplementary Affidavit, Counter Affidavit and Supplementary Counter Affidavit filed by the parties concern. I have also perused the Lower Court Records. Based on the above, my findings are as under:-</p>	

आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर ⁴ 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>(a) That the land involved in the dispute is only 16 dhur which is too small in area to undertake any meaningful agriculture.</p> <p>(b) From the perusal of the order of the Learned SDO, it appears that the Learned SDO has held that the Revisionist is not an adjacent raiyat nor a Co-sharer, a fact which has been admitted by the Revisionist himself. He has a house little away from the disputed land. The Learned SDO failed to appreciate that the Revisionist, if not an adjacent raiyat, buys a 16 dhurs of small plot, then naturally he can use it only for non-agricultural purposes as agriculture is not possible in such a small area.</p> <p>(c) The Learned SDO confined his observation to the fact whether the Pre-emptor is an adjacent raiyat or not. He forgot to appreciate the fact that the land use itself is not intended for agriculture purpose.</p> <p>(d) Coming to the order of Learned Collector Siwan, the Learned Collector has also dealt with the fact whether the Pre-emptor is an adjoining raiyat or not. He has also not agreed to the contention of the Revisionist that he has purchased the small piece of land for residential purposes.</p> <p>(e) In my view, the Revenue Authorities below have not looked into the issue in totality. A land may be agricultural in nature but nothing stops the owners of that land to part away a small portion of that land for residential purposes. Section 16 (3) of the Bihar Land Ceiling Act provides prevention of</p>	

आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 5 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>fragmentation of agriculture holdings. Moreover this facility is available only to 'raiya's' and not to any homestead dweller. Had it been so, then no person would be technically able to buy a small piece of land for the purposes of construction of house. Therefore, the Provision of 16 (3), logically, has to be applied only to agricultural holding and that facility should be given to 'raiya's' only. Section 16 (3) cannot be applied to residential area, homestead dweller or to a land intended to be used for residential purposes.</p> <p>(f) Revenue Authorities therefore must not initiate Pre-emption proceedings merely on the fact that all properties must be sold to an adjacent person. The owner of the property should have a right to sell his property to whoever he pleases. That is why numerous Court rulings have held that Pre-emption is a weak right. This right should not be exercised in small plots intended for residential purposes.</p> <p>(g) Now coming to the Judgement of the Hon'ble Supreme Court filed by the Learned Advocate of the OP. This Judgement (Civil Appeal No 187/2003) states that a complete stranger cannot be called an adjacent raiyat by first purchasing an adjoining land and then claiming to be an adjacent raiyat. He should be already an adjacent raiyat before challenging any transaction. However, this judgement will not be applicable to this dispute. This is because the land under discussion in the</p>	

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>Hon'ble Supreme Court Judgement is agricultural land with an area of 1.3 acres which is sufficiently large by Indian standards. Moreover, the dispute at the Supreme Court has been confined to the fact whether the party concerned is an adjacent raiyat or not. Whereas in the instant case, the dispute at hand is to decide whether the land is an agricultural land or residential land. Given a very small area of the land involved, i.e. 16 dhur, the issue at hand is to decide whether the Pre-emption laws are applicable in the instant dispute or not. In my view, the Supreme Court Judgement therefore would not be very helpful to guide us whether or not Section 16 (3) of Bihar Land Ceiling Act can be invoked on residential properties or to land intended for residential use.</p> <p>Conclusion:-</p> <p>In light of the foregoing analysis, I tend to hold the view that the Learned Lower Courts have ignored a vital aspect of the land use of the disputed land. 16 dhur of residential land being purchased by the person who has already conceded that he is not an adjacent raiyat, only proves that he wants to make use of that 16 dhur land for a non-agriculture purpose.</p> <p>The moment we come to know that a particular piece of property transaction is intended for non-agriculture purpose, then we should abstain from invoking the Pre-emption Laws.</p>	

6/1/2017

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>In the instant matter, the Revenue Authorities, particularly the Learned SDO, have erred in needlessly invoking Section 16 (3) of Bihar Land Ceiling Act, 1961. That be the case, I find myself unable to support the order of the Learned Collector or the Learned DCLR.</p> <p>I therefore, find that Section 16(3) is not maintainable on such small plots of land intended for residential use. Therefore, I set aside the order of the Learned Collector and the Learned SDO.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	