

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.- 95/2006
Dist.- Kaimur

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

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Sarbjit Rai

Versus

- Petitioner/ Appellant

Uday Narain Rai & Others

- Opposite party

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Appearance:

For the Appellant/Revisionist
For the OP

: Shri Arvind Nath Pandey
: Shri Ravi Kumar

ORDER

16.12.2016

This is a Revision Application filed on 19.05.2006 against a Pre-emption Case. Since then the case was taken up on various dates and was part heard. The Lower Court Records took at long time to reach and hence the matter dragged on needlessly. Finally the case was heard in great length on 08.12.2016.

The Learned Advocate of the Revisionist Shri Sarbjit Rai was present on heard. The Learned Advocate of the Respondents No-2 to 6 was also present and heard. The Learned Advocate of the Respondents wanted to file a

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16/12

<p>श्री कृष्ण सिंह गोरखपुर</p>	<p>2 आदेश और पदाधिकारी का हस्ताक्षर 2</p>	<p>आदेश पर न. कार्रवाई के बारे में दिनांक तारीख सहित</p>
	<p>written note of arguments. He was directed to the file same before 16.12.2016 which he did on 14.12.2016. The Respondent No-2 to 6 are the legal heirs of Late Chaturi Singh who is the vendee.</p> <p>As per the Learned Advocate of the Revisionist who is also the Pre-emptor, the Revisionist is a Co-Sharer of Plot No.1586 and 1591 measuring a total area of approximately 63 decimals. The Revisionist has a boring and machinery on these Plots. He further says that Respondent No. 1 Shri Uday Narain Rai had executed a sale deed to one Chaturi Singh on 08.12.92, Late Chaturi Singh is totally an outsider whereas he is related to Respondent No. 1 Shri Uday Narain Rai hence he is not only a Co-Sharer but also an adjacent raiyat. He further mentions that Respondent No. 1 is not related to Respondent No. 2 to 6. Aggrieved at this sale, the Revisionist filed a Pre-emption Application before the Learned DCLR, Mohaniya who after a spot inspection passed a order on 29.11.2004 in favour of the Revisionist and allowed the Pre-emption Application.</p> <p>Aggrieved at this order, the Respondents filed an Appeal before the Learned Additional Collector who vide order dated 25.4.2006 set aside the order of the Learned DCLR and hence this Revision have been filed by the Pre-emptor. He further says that the Learned Additional Collector has held that the Pre-emption is a weak right. However he draws the attention of this Court to the judgement passed by the Hon'ble Supreme Court drawing a different conclusion. This Court asked the Learned Advocate to file the judgement of the Hon'ble Supreme Court which he did.</p> <p>I have perused the Hon'ble Supreme Court Judgement pronounced in Civil Appeal No. 187/2003 wherein the Hon'ble Supreme Court held that under section 16(3) of the Bihar Land Ceiling Act, 1961, the right of Pre-emption is conferred not only on a Co-Sharer but also on a raiyat holding land adjoining to the land transferred. The Hon'ble Judges are, however of the considered opinion that</p>	<p>16/12</p>

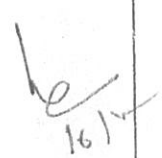
"a complete stranger who was not originally a raiyat holding land adjoining to the land transferred cannot be allowed to defeat the right of Pre-emption of a Co-Sharer by first purchasing and adjoining plot of land and thereafter claiming to be a raiyat holding land adjoining to the land transferred. The decisions of the Patna High Court are cases of original boundary raiyats resisting the claim of Pre-emption by a Co-Sharer of the transferred land. The object of Section 16(3) of the Act is to recognise the right of Pre-emption of the Co-Sharer of the transferor or any raiyat holding land adjoining to the land transferred and this object would be frustrated if strangers are allowed to first buy one Plot of land and then resist the claimed right of Pre-emption of a co-sharer or a boundary raiyat on the basis of such first purchase of a Plot of land."

I have also perused the order of the Learned DCLR and the Learned Additional Collector. The Learned DCLR had conducted an on the spot inspection on 27.11.2004 and found that the Applicant is in the possession of the Plot and crop was sown. He also confirmed that the Applicant (Revisionist) and the vendor are belonging to one family. The property is a joint property and since there has not been any formal division of property, hence all the persons are co-sharers which also means that the Applicant (Revisionist) is also a co-sharer. Accordingly the Learned DCLR upheld the Pre-emption Application.

However, the Learned Additional Collector, on Appeal, have over turned the order of the Learned DCLR by holding that "the Pre-emption right is a weak right and in the instant case where the transferees (the Respondent No-1 in the Revision Case) themselves are adjoining raiyat, the adjoiningness of the Respondent (Revisionist in the Revision Case) to the transferred land will not merit his claim." Hence the Learned Additional Collector held that the Appellant have a better case than the Respondents.

Apparently from the perusal of the record, it is clearly a dispute between one party (Revisionist) who claims

16/12

सी क्रम सं० सौकरिक	4 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर क, कार्यवाई के बारे में दिवाणी तारीख सहित
	<p>to be a co-sharer as well as adjoining raiyat and the other party Respondent No. 2 to 6 who are at best an adjacent raiyat but certainly not a co-sharer.</p> <p>The Judgement pronounced by the Hon'ble Supreme Court basically enunciates the spirit of Pre-emption where a "complete stranger" cannot be allowed to buy a land and then raise the Pre-emption issue of an adjoining Plot by claiming to be an adjoining raiyat. Hence the spirit of the Hon'ble Supreme Court is that a person who is either an adjoining raiyat or a co-sharer should have a stronger case for Pre-emption than a person who is a stranger to the owners of the land. However, this Judgement will not apply in this case as the land transferred by Vendee (OP No 1) is to the adjacent raiyat (OP No 2 to 6) and they are not complete strangers. Though he could have sold this land to the Revisionists also, who is both a co sharer and an adjacent raiyat.</p> <p>The Learned Advocate of Respondents No. 2 to 6 has filed the written notes of arguments on 14.12.2016. In his submissions, the OP No 2 to 6 have not denied that the Revisionists is not a co sharer. It is also not disputed that the disputed land is under active possession of the Revisionists who has his boring etc on the land.</p> <p>Now, therefore, the only issue left for adjudication is that, where both (Revisionist and the Respondents 2 to 6) are adjacent raiyats, then who should be preferred - a relative (and a co sharer) or a person who is unrelated to the vendor? Although, traditional view on pre-emption law is that if the vendee is either a co sharer or an adjacent raiyat, pre-emption should fail but , in this case, it must be borne in mind that the plot under discussion is already in possession of the Revisionist and hence in my view, the person, who is both a co sharer and an adjacent raiyat shall have preference (and who is also in possession) over the person who is just an adjacent raiyat but not a co sharer.</p>	

आदेश की क्रम सं० और तारीख 1	5 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>Thus, he found enough reason to reopen the case and issued notices in the year 1992. From the order of the Collector dated 28.02.1994, it is also clear that the then land holder Ram Deo Singh's sons were substituted as the land holder had died. After such substitution, an Order of the Collector was passed on 04.09.1995 for reopening the case under section 45B. Subsequently, the case was finally decided by the Learned Collector on 28.10.2002. Thus, it appears that the Collector had followed due procedure while reopening the case under section 45B of the Land Ceiling Act, 1961. Therefore, I do not agree with the Learned Advocate of the Revisionist that the case was reopened without following due process or without the knowledge of the Revisionist.</p> <p>(b) Coming to the issue of the objections filed by the Revisionist, I find that a total of 15 objections were filed in the court of the Collector and the Collector had considered each and every objection and disposed them individually. The first objection was raised by the Revisionist that there was a formal division of property between Chandradeo Narayan Singh and his brother Thakur Ram Dev Singh and hence, they should be treated separate families. However, the Collector found that post division, the land holder still retained 89.4 acres of land. On second objection (Objection 2 as well as Objection 10) relates to gifting away of land by Chandra Deo Narayan Singh to his wife and daughter. On this issue, the Learned Collector has rightly held that such a gift cannot be legally validated as the purpose was to defeat the Ceiling Laws. On the point of Objection No 3, the issue</p>	

Hence, I tend to agree with the order of the Learned DCLR and uphold the same. Accordingly, the order of the Learned Additional Collector is set aside.

Revision allowed.

Dictated & Corrected

K.K.Pathak
Additional Member
Board of Revenue, Bihar.

(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.