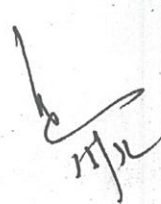


आदेश की क्रम सं. और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
15.12.2016	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.- 109/2005</p> <p style="text-align: center;">Dist.- Siwan</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p style="text-align: center;">=====</p> <p style="text-align: center;">Case No. 109/2005 Rama Nand Choudhary Vs. Sheo Nath Choudhary =====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist : Shri Dharendra Kumar</p> <p>For the OP : Shri Akhileshwar Kumar</p> <p style="text-align: center;"><u>ORDER</u></p> <p>Heard both the parties. The Learned Advocate of Respondents is present. The Learned Advocate of Revisionist is absent but Revisionist himself is present. Heard him in detail.</p> <p>This is a pre-emption case which was filed on 27th May 2005 against the order passed by the Collector on 10th April 2005. Since then, this matter was being part heard on various dates, but no final order should be passed. Subsequently on 3rd May 2012, this case was dismissed for default on 3rd May 2012. Then a Restoration Petition was filed and the case was restored on 24th April 2014. Finally, the case was heard on 9th Dec 2016 and this order is being passed.</p>	

The Revisionist was heard. The Revisionist, who is the pre-emptor, points out that the disputed plot lies in front of his property and hence his claim is genuine. The Revisionist Ramanand Choudhary has made Shree Sheo Nath Choudhary and Ramesh Chandara as the Respondent OPs. He says that he and Respondents are not related.

The Learned Advocate of Respondent No. 2 was heard in great detail. He mentioned that the previous Additional Member Board of Revenue had already heard the matter and both the parties have already has filed their written notes of argument. He further says that the Revisionist is the pre-emptor, while he, the Respondent, is the purchaser.

The Case of the Revisionist is that the Revisionist filed a pre-emption application before the Learned DCLR who was pleased to reject the Pre-emption case by his order dated 3rd August 2002. Aggrieved at this order, the Revisionist approached the court of Learned Collector who however dismissed the appeal by an order dated 10th April 2005. Aggrieved at this, the Revisionist filed this revision application.

The Learned Advocate of the Respondent mentioned that the OP No. 2 Shri Ramesh Prasad has sold this land to the Respondent Shree Sheo Nath Choudhary. He further claimed that though he is not a co-sharer but adjacent Raiyat and the disputed plot is situated just opposite his house.

I have perused the lower court records as well as the order passed by the Learned DCLR and the Learned Collector Siwan. I have also seen the written notes of

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argument submitted by the Revisionist as well as the Nazri Naksha submitted along with the papers. From the perusal of records, the following is clear :-

(a) That the area of the disputed plot is hardly 2 Katthas which is not sufficient to undertake any agriculture and hence , it is apparent that the plot is likely to be used for non agricultural purposes.

(b) From the Perusal of the order of the Learned DCLR who has conducted the site inspection of the spot and has confirmed that the area is generally residential.

(c) The adjoining plots too are so small in area that any agriculture cannot happen on such small and scattered plots.

(d) During the course of the hearing, it has been confirmed that OP no 1 had purchased the land for constructing a house which is also clearly mentioned in the written notes of arguments (Para No.11) submitted by the OP No 1.

(e) Similarly it is also evident that the Petitioner (Revisionist) too has a house in the vicinity.

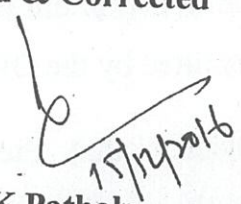
From the above, it is clear that the area surrounding the disputed land is residential and the purpose for which the disputed land is to be put to use is also residential (which is also borne from the fact that the disputed area is only 2 kattha on which any agriculture activity is impossible) and more over, both the parties during the course of hearing agreed that the intended use is residential.

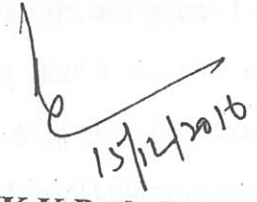

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It is a settled principle that the ceiling laws do not apply to residential lands and hence the question of pre-emption or the right of pre-emption does not apply. Unfortunately, both the lower courts', namely, the Learned Collector and the Learned DCLR have ignored this vital point. The spirit of pre-emption is to prevent the fragmentation of agricultural land holdings. Thus, it applies to purely agricultural lands as well as such lands which are part agriculture and part homestead. But, in this case, the disputed plot as well as the adjacent plots are purely residential and therefore, I hold the view that the ceiling laws or pre-emption laws are not applicable in this case.

Hence this revision petition is not maintainable and therefore dismissed.

Dictated & Corrected


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


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