

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
19/01.2017	<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. - 116/2005 Dist.- Siwan</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Sunder Raut - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>Lalita Devi & Others - Opposite party</p> <p>=====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist :Shri Pramod Kumar For the OP :Shri Ajay Kumar Pandey</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter where a Revision application has been filed on 13.05.2005 against the order passed by the Learned Additional Collector, Siwan on 19.03.2005. The case was admitted for hearing on 05.01.2006. Since then, the case remained part heard. The Lower Court Records took time to reach.</p> <p>Meanwhile, the two cases, the Revisional Case No. 116/2005 and 117/2005 were amalgamated. The case came up for hearing on 21.12.2016 where no party was present. The matter was adjourned to 26.12.2016 with the condition that if any party remains absent on the next date, the matter will be heard on ex parte. On 26.12.2016, the OP wanted a short adjournment while the Petitioner was absent.</p>	



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	<p>The matter was again adjourned on 11.01.2017 where the Petitioner was present and filed a Vakalatnama and again wanted a short date. The OP was present.</p> <p>Since the matter is going on since the last 12 years, this Court thought it appropriate to not give any more adjournments to any party. The Learned Advocate of the OP No.2 was willing to argue and was heard detail on merits. The case was posted for order on 17.01.2017 by which time the Learned Advocate of the Petitioner was given liberty to file any more written notes of argument.</p> <p>The Learned Advocate of the Petitioner has chosen not to file any written notes of argument during this period. That be the case, having concluded the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the OP, who is the purchaser, the Petitioner, who is also the Pre-emptor, is not the boundary raiyat. The vendor, who is OP No. 1, sold the land to OP No. 2 who is the purchaser Petitioner in the year 1988 two sets of land each measuring 4 katha and 10 dhurs.</p> <p>The Pre-emptor had a filed a Pre-emption application in Court of the Learned SDO who, vide order dated 08.08.1988, rejected the Pre-emption application. Further aggrieved at this order, the Pre-emptor approached the Learned Collector who too, vide order dated 19.03.2005, dismissed the appeal.</p> <p>Thus further aggrieved, the Pre-emptor has preferred this Revision application and hence this proceeding.</p>	

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	<p>The Learned Advocate of the OP further mentioned that he has purchased the disputed land for homestead purpose. There is a report of the Circle Officer also which says that it is a homestead land. There are various other houses in the vicinity.</p> <p>The Learned Advocate of the purchaser (the OP No. 2) further argues that he is not related to the vendor or the Pre-emptor and he is very much in possession of the land. Thus this case is fit to be dismissed.</p> <p>I have perused the documents available on the file as well as the Lower Court Records including those of the Learned SDO and the Learned Collector. Based on the above, my own findings on the issue are as under:-</p> <p>(a) That the land involved has an area about 8 katha 20 dhurs in two blocks of 4 katha 10 dhur each (involved in two different proceedings). Both the blocks are contiguous to each other. This area, in my opinion, is enough to carry on any agricultural activity. At the sametime, it is too big a plot to be devoted entirely for a homestead purpose. Hence, it is difficult to believe that the entire land could be used for homestead purpose.</p> <p>(b) I also find that this argument of the land being used for the homestead purpose was not argued by the OP (purchaser) before the original Court of Learned SDO or before the Court of Learned Collector, for that matter. Thus, the OP purchaser has raised this entirely new argument before this Revisional Court.</p>	

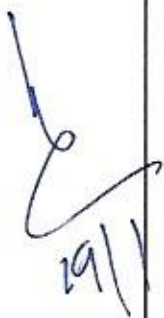
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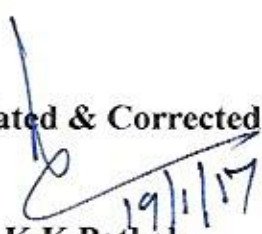

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	<p>(c) However, it has been conceded by the Pre-emptor himself that he has a house on the eastern side of the disputed plot.</p> <p>(d) I find that there is no report of the Circle Officer suggesting that the land is homestead. On the contrary, I find a report by the Learned Survey Advocate dated 03.11.1987 mentioning that the correct area of the disputed plot is 18 katha 2 dhurs.</p> <p>(e) Coming to the issue of the adjacency of the Pre-emptor, it is an admitted position that on the eastern side lies the property of the Pre-emptor's family on account of his grandfather and father.</p> <p>(f) It is also an admitted position that none of the parties are Co-sharers. It is also an admitted position that OP purchaser is not the adjacent raiyat and he has purchased the land from the vendor.</p> <p>(g) However, from the facts mentioned by the OPs in the Lower Court, it appears that half dhur from the eastern side and the southern side has been left by the vendor to himself and has not been sold to the vendee. This is a surprising behaviour on part of the vendor. This has been admitted by the purchaser in his rejoinder before the Learned Lower Courts. This gives rise to the suspicion that perhaps this 1 dhur land has been deliberately left over by the vendor in order to defeat the Pre-emption laws.</p>	

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	<p>(h) As per the boundary described in the order of the Learned SDO, if this half dhur land is not left from the sale deed transaction, then the Pre-emptor certainly becomes an adjacent raiyat. That be the case, the right of the Pre-emptor becomes stronger than the OP purchaser, who is a rank outsider.</p> <p>Conclusion:-</p> <p>From the above findings, it is clear that the vendor, while selling the disputed plot to the vendee, has retained 1 dhur from eastern and southern portion with the deliberate intention of avoiding the situation where the entire vended land should not come become adjacent to the Pre-emptor Petitioner. By keeping 1 dhur of small insignificant strips from southern and eastern portions, the vendor and the vendee have tried to flout the Pre-emption laws as defined under Section 16 (3) of Bihar Land Ceiling Act, 1961.</p> <p>The explanation given by the vendee (the OP) with regard to this narrow strips of land being excluded from the sale deed is that these strips are supposed to serve as an outlet from the northern portion of village and the homestead land situated south of the same and the same was the necessity and compulsive need of the locality and hence the vender left this small strip of land for the community. This explanation is unacceptable. What the OP here means to say is that the vendor deliberately suffered the loss of value of land equal to 1 dhur on the south and 1 dhur on the east.</p>	

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	<p>Had the vendor been really serious about the interests and welfare of the locality, then he should have executed a sale deed or a Daan Patra in favour of the village Panchayat saying that he is donating these 2 dhurs of land from the south and east for serving as outlets for the community at large. Since, such a Daan Patra has not been executed, the motive for leaving this small strip of land is ulterior at best.</p> <p>The question is why would the vendor suffer this loss. Any other rational vendor would have sold the entire land to the vendee and thereby resting the responsibility with the vendee to leave a small strip of land on either side for the pious and noble objective of outlet for the locality.</p> <p>That be the case, I hold that keeping out small strip of land away from the sale deed is a deliberate attempt to circumvent the Pre-emption laws. Unfortunately, both the Lower Courts have ignored this vital point. Had the small strip in the south and in the east were not kept with the vendor and sold to the vendee, then the pre-emptor would have become an adjacent raiyat.</p> <p>In order to avoid this situation, the vendor and the vendee themselves have devised this mechanism to leave 1 dhur from the southern and eastern side with the vendor so that, technically, the Pre-emptor does not become an adjacent raiyat. In the process, they have technically fragmented the land hopelessly and hence have further defeated the objective of Section 16 (3) of Bihar Land</p>	

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	<p>Ceiling Act, 1961 which is to prevent fragmentation of agricultural holdings.</p> <p>That be the case, I find it difficult to support the judgement of the Learned Lower Court. Accordingly, the order passed by the Learned Collector dated 19.03.2005 and 20.03.2005 in both the analogous cases are set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div>	