

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.- 123/2005
Dist.- Siwan

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

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Deonarain Prasad & Others	- Petitioner/ Appellant
Versus	
Om Prakash Yadav & Others-	- Opposite party

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Appearance:

For the Appellant/Revisionist	: Sri Ravindra Kumar Choudhary
For the OP	: Sri Ravi Bhushan Verma

ORDER

16.12.2016

This is a Pre-emption Appeal preferred against the Learned Collector Siwan dated 02.05.2005. Heard the Learned Advocate of the Petitioner Purchaser.

The Pre-emptors are absent. There are three parties, of which office notices have been served on two parties. In case of the Third Pre-emptor, the notice has come back unserved. No reply on behalf of the Opposite Parties has been filed so far. From the perusal of the Case Record, it appears that the OPs have never appeared in the case since the Revision was filed on-08.06.2005.

In between, the case was dismissed for default on 22.02.2012. Subsequently, a Restoration Petition was filed

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and the case was restored on 19.02.2015. Since then the case has been going on. The matter was again heard on 08.12.2016. However it was found that the OPs have been absenting themselves since the Revision Case was filed. Moreover, the written reply too has been received from the OPs. This Court therefore while hearing the Learned Advocate of the Revisionist gave another opportunity to the OPs to file their written reply before 16.12.2016 else the case will be decided ex-parte.

The case, as per the Learned Advocate of the Revisionist is that he purchased the land khata no-195 plot No-1492 having area 1katha 7dhur through a registered sale deed on 03.07.1991. Since then he has been enjoying the peaceful possession of the land. The Pre-emptor filed a case before the Learned DCLR, Siwan that he is a co-sharer as well as an adjacent raiyat in this land. The DCLR dismissed the case holding that the Pre-emptor is neither a co-sharer nor an adjacent raiyat. The Pre-emptor went an appeal before the Learned Collector who remanded the matter back to Learned DCLR and asked him to conduct a local inspection and passed a fresh order. The Learned DCLR conducted a local inspection and again dismissed the case reiterating that the land is residential.

The Pre-emptor again went in appeal before the Collector (Appeal no. 277 of 1998-1999) and again the Collector remanded the matter back to Learned DCLR. The Learned DCLR, for the third time again heard the matter and this time he allowed the Pre-emption Application by overturning the previous orders.

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Aggrieved with the orders, the Revisionist filed an appeal before the Learned Collector (No. 448 of 2002). The Learned Collector on 02.05.2005 dismissed the appeal and hence the Revisionist have preferred this Revision.

I have perused the Lower Court Records as well as the order of the Learned Collector and the Learned DCLR.

As can be seen from the material available on the record, the Learned DCLR heard both the parties on 05.12.94 and passed a reasoned order rejecting the Pre-empting application. Subsequently, when the matter was remanded by the Learned Collector back to the Learned DCLR, he conducted a site inspection and passed a speaking order again.

As per the site inspection, on the north of this plot lays a Petrol Pump, on the west lies the plot of Sri Shital Choudhary and Badhai Choudhary, the eastern side of the plot is owned by the Applicant which was confirmed by the document that was produced before the Learned DCLR. The plot and adjoining plots appear to be residential. Both the parties have purchased very small amount of land whose obvious purpose only can be Residential. Hence the said plot is not covered under Pre-emption Laws. Based on this inspection, the Learned DCLR again rejected the Pre-emption Application on 26.06.1998.

Aggrieved with this order, the Pre-emptor again approached the Learned Collector who again remanded the matter back to Learned DCLR who passed an order on 05.10.2002 accepting the Pre-emption Petition. Subsequently

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this order was challenged by the Revisionist before the Collector who dismissed the appeal and upheld the order of the Learned DCLR.

My own view on the order of the Learned DCLR , passed on 05.10.2002 is that the Learned DCLR had ignored a vital point about the nature of the land. What is important is that the plot under dispute is so small that it can be only used for residential purpose. The plot also lies on the Siwan-Gopalganj road as is evident from the previous order of the Learned DCLR on 02.06.1998. The vicinity has a Petrol Pump. It has been evidently proved by the site inspection in 1998 that the quality of the land is only fit for Residential Purpose. The Learned DCLR, while passing the order dated 05.10.2002, also held that Pre-emptor has got the mutation done which is a proof of possession. Again the area under discussion is so small as to render no possibility of agriculture. In this order, the Learned DCLR has not been able to prove that the Pre-emptor is a co-sharer.

All that can be concluded from the order of the Learned DCLR is that both the parties have ended up buying plots from various vendors in small pieces. Thus, the overall objective and usage is apparently residential and hence Pre-emption Proceedings do not lie.

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 (on his order dated 05.10.2002) have ignored this vital point. The spirit of pre-



emption is to prevent the fragmentation of agricultural land holdings. 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.

That be the case, I uphold the order passed by the Learned DCLR on 27.06.98 and quash the order of the Learned DCLR passed on 05.10.2002 as well as the order passed by the Learned Collector on 02.05.2005.

Revision Allowed.

Dictated & Corrected

16/12/2016
K.K.Pathak
Additional Member
Board of Revenue, Bihar.

16/12/2016
(K.K.Pathak)

Additional Member
Board of Revenue, Bihar.