
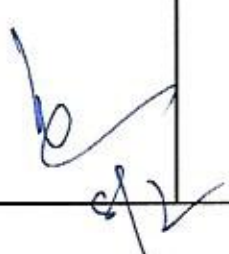


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
08.02.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. – 126/1997 Dist.- Khagaria</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Ashok Yadav & Others</td><td>Versus</td><td>- Petitioner/ Appellant</td></tr><tr><td>Gore Lal Yadav</td><td></td><td>- Opposite party</td></tr></table> <p>=====</p> <p><u>Appearance:</u></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Sanjeev Ranjan</td></tr><tr><td>For the OP</td><td>:Shri Mithilesh Kumar Upadhyay</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision application was filed on 07.06.1997 against the order passed by Additional Collector, Khagaria on 21.01.1997. Thereafter the case was dismissed for default on 21.04.1998 because of non appearance of the Petitioners. Subsequently, a Restoration Petition was filed and the case was restored on 02.09.1998. Since then, the case remained part heard till the year 1999.</p> <p>The case shows no development from the year 1999 till 2016. It was neither pursued by the Petitioner nor the Opposite Party. Subsequently, the Petitioner filed an application and the case was reopened for hearing in 2016.</p>	Ashok Yadav & Others	Versus	- Petitioner/ Appellant	Gore Lal Yadav		- Opposite party	For the Appellant/Revisionist	:Shri Sanjeev Ranjan	For the OP	:Shri Mithilesh Kumar Upadhyay	
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	<p>The hearing took place on 03.02.2017 where the Learned Advocate of the Revisionist (who is the purchaser) and the Learned Advocate of the OP (who is the Pre-emptor) was heard in great detail. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he is the purchaser of the land. There are two Petitioners who purchased 14 katha 3 dhur each in the disputed Plot 241. Thus, total area involved is 1 bigha 8 katha 6 dhur between the two Petitioners.</p> <p>The Learned Advocate further argues that when the vendees are two different persons having two different sale deeds, the Pre-emption application should have been filed separately whereas the Pre-emptor OP had filed only one common application before the Learned DCLR. The Learned Advocate also mentions certain court judgements.</p> <p>Continuing his argument, the Learned Advocate of the Revisionist further claims that it is an admitted position before the Learned DCLR that both the parties, the Revisionist and the Pre-emptor are adjacent raiyats though the Revisionist area is lesser, whereas the area of the Pre-emptor having adjacency is more. This is an admitted position by the Pre-emptor as well, in the Court of the Learned DCLR. Therefore, the Learned DCLR vide order dated 06.08.1994 rejected the Pre-emption application holding that the vendee also is an adjacent raiyat.</p> <p>Aggrieved at the order of the Learned DCLR, the Pre-emptor approached the Court of the Learned Additional Collector who, vide order dated 28.01.1997,</p>	


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	<p>allowed the Pre-emption application on the ground that the vendee is not an adjacent raiyat quoting the boundaries of Plot No. 223. The Learned Advocate argues that the interpretation of the boundary made by the Learned Additional Collector is not correct and the vendee indeed is an adjacent raiyat.</p> <p>Thus aggrieved at the order of the Learned Additional Collector, the purchaser Revisionist has approached the Board of Revenue and hence this proceeding.</p> <p>I also heard the Learned Advocate of the OP who is the Pre-emptor. He clarifies that though the Pre-emptor had made this argument before the Learned DCLR that the Revisionist is also an adjacent raiyat, however, he subsequently found out that the Revisionist was not at all an adjacent raiyat and this fact was brought before the Learned Additional Collector.</p> <p>He mentioned that the land use is primarily agricultural. The total area of Plot No. 241 is 2 bigha 16 katha of which he had purchased half of the land in the year 1959 itself. In the year 1959, no Pre-emption application was filed and he has been enjoying peaceful possession of half of the Plot No. 241.</p> <p>Concluding his argument, he further says that the issue of filing one application is a new issue raised by the Revisionist before the Revisional Court whereas he should have taken this plea before the original Court of the Learned DCLR.</p> <p>Thus having heard the Learned Advocates of the both the parties and having also perused the material</p>	

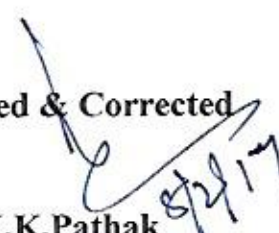

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	<p>available on record, my own findings on the matter are as under:-</p> <p>(a) It is an admitted fact the land is for agricultural use and not for residential purposes.</p> <p>(b) It is also an admitted fact that both the parties are not related to the vendor or to each other and hence no body is a co-sharer. Therefore only issue left to be adjudicated is the adjacency.</p> <p>(c) On the adjacency issue, from the perusal of the order of the Learned DCLR and the Learned Additional Collector as well as the arguments made by both the parties, it is clear that both the parties are adjacent raiyats to the disputed plot. However, the purchaser is an adjacent raiyat on account of a plot 223 which lies north west to the dispute plot 241. Whereas the Pre-emptor is an adjacent raiyat of plot 241 itself because he owns the eastern of plot 241 since the year 1959. The boundary of the Pre-emptor therefore is a huge vertical line which divides the plot 241 from the middle. Whereas the purchaser's existing plot 223 barely touches the vended land, that too only marginally.</p> <p>(d) The above analysis is important to understand that though both the parties are adjacent to the vended land, the land of the</p>	

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	<p>Pre-emptor is hugely adjacent to the land of the Revisionist. In fact, from <i>Nazri Naksha</i> submitted by both the parties in the written notes of argument, it is clear that the Revisionists' portion of land is not even 5 percent of the boundary that the Pre-emptor shares with the disputed plot. Moreover, the Pre-emptor is an existing raiyat of plot no 241. The Learned Additional Collector has held that Section 16 (3) of Bihar Land Ceiling Act, 1961 has to ensure consolidation of the plots also. In a way, the logic extended by the Learned Additional Collector is correct in the sense that if we prevent the fragmentation of the plots, then the bigger chunks of land (constituting many such plots) are automatically prevented from fragmentation.</p> <p>(e) However, we should not always look with narrow prism of judging adjacency in a plot wise manner. If a raiyat is adjacent to a block of land having many plots then his claims of Pre-emption is strong. In the instant case, the Pre-emptor already owns to plots of land adjacent to the disputed plot. Whereas the Petitioner has only one plot slightly adjacent to the disputed plot.</p> <p>(f) I also would like mention here that as per the traditional understanding of pre-emption</p>	

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	<p>law, if the vendee is either a Co-sharer or an adjacent raiyat, then the Pre-emption fails. In this case, both the parties are adjacent raiyats. Therefore, going by very technical approach to which the Learned DCLR had adopted, the Pre-emption should fail because both the parties are adjacent raiyats.</p> <p>(g) However, going by the more haloed objective of preventing even the plot wise fragmentation, which approach the Learned Additional Collector had adopted, the pre-emptor has a strong case as by allowing the Pre-emption, the State would be giving the entire plot to one raiyat instead of two raiyats owning it presently.</p> <p>Conclusion:-</p> <p>From the foregoing analysis, it is clear that both the parties are adjacent to the disputed land. While the Petitioner-Revisionist barely touches the disputed land and that is his claim to adjacency, the Pre-emptor's existing land runs almost parallel to the disputed land and moreover, he is the raiyat of the same plot.</p> <p>Therefore, this is a case where the adjacency has to be measured in relative terms. Section 16(3) of the Bihar Land Ceiling Act, 1961 does not define or lay down any guideline as to what should be done when both the disputing parties are adjacent to a vended land.</p> <p>In such a case, one would prefer to preserve the plot wise consolidation of the land which approach the</p>	

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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
	<p>Learned Additional Collector had followed. On the basis of that understanding, the Learned Additional Collector had allowed the Pre-emption in favour of the OP.</p> <p>However, the traditional understanding under Section 16(3) Bihar Land Ceiling Act, 1961 has been that if the vendee is either an adjacent raiyat or a Co-sharer, then the Pre-emption fails. In this instant case, the vendee is certainly an adjacent raiyat within the meaning of Section 16(3). However, as mentioned earlier, his plot barely touches the vended plot whereas the Pre-emptor's plot runs parallel to the vended plot.</p> <p>Section 16(3) has not defined any degree of the adjacency.</p> <p>In the above scenario, I feel that the State should not interfere in a private transaction where both the disputing parties are fulfilling the criteria of Section 16(3). Section 16(3) does not lay down any degree of adjacency.</p> <p>That be the case, freedom must rest with the vendor who should decide that between the two adjacent raiyats, he should sell his land to which party. By venturing into unchartered territory of deciding the degree of adjacency, the Revenue Authorities would be opening a Pandora's box. This situation must be avoided at all costs.</p> <p>Therefore, I tend to play a little conservative in exercising the State's power under Section 16(3) and not needlessly interfere into a land transaction between two private parties. To that end, the order of the Learned DCLR qualifies the strict muster required of Section 16(3).</p>	

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	<p>In light of the above, I would find it difficult to support the order passed by the Learned Additional Collector who was in the favour of preserving even the plot wise consolidation of land, which though technically correct, is not practicable.</p> <p>Therefore, I set aside the order passed by the Learned Additional Collector dated 28.01.1997 and uphold the order passed by the Learned DCLR dated 06.08.1994.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="430 1064 852 1312"> <p>Dictated & Corrected</p> <p></p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="881 1144 1284 1266"> <p></p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	