

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>18.01.2017</p> <p><i>[Handwritten signature]</i> 18/1</p>	<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.:- 136/2005 Dist.:- Siwan</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Fursat Singh and Others - Petitioner/ Appellant</p> <p style="text-align: center;">Versus</p> <p>Shankar Rai and Another - Opposite party</p> <p>=====</p> <p><u>Appearance:</u></p> <p>For the Appellant/Revisionist : Shri Ajay Kumar Pandey For the OP : Shri Radha Mohan Singh</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Revision application filed against a Pre-emption proceeding in which the Learned Collector has passed an order on 13.06.2005 in Case No. 282/1994-95. The case was admitted for hearing on 22.09.2005 and since then the case remained part heard on many dates. The Lower Court Records took time to reach.</p> <p>The case finally came up for hearing on 29.12.2016 where no party was present. It was observed that the case was going on for about 12 years and hence</p>	

आदेश की क्रम सं०
और तारीख

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आदेश और पदाधिकारी² का हस्ताक्षर

2

आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित

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if the parties remain on next date, ex parte order will be passed.

The case therefore was adjourned to 09.01.2017. On that date, the Learned Advocate of the Petitioner was present. The Learned Advocate of the Pre-emptor was also present but mentioned that the arguing advocate was busy elsewhere and wanted next date which was denied with the liberty being given to the Pre-emptor to file a written argument if he so desires. He filed written note of argument on 16.01.2017.


The Learned Advocate of the Petitioner however was heard in great detail and the thus hearing was concluded and this order is being passed today.


As per the Learned Advocate of the Revisionist, who is the purchaser, OP No. 2 is the vendor and OP No 1 is the Pre-emptor. OP No. 2 sold the land to the Revisionist having an area of 2 kathas on 13.03.1991. The Pre-emptor filed a Pre-emption application before the Court of the Learned DCLR who, vide order dated 21.04.1994, allowed the Pre-emption application. Aggrieved by the order of the Learned DCLR, the Revisionist approached the Court of the Learned Collector, Siwan who too, by an order dated 12.05.2005, rejected the appeal and upheld the order of the Learned DCLR.

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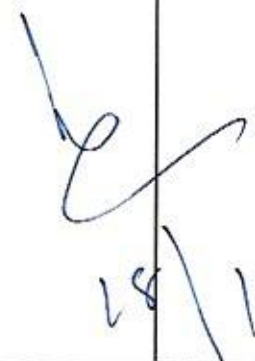
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	<p>Thus further aggrieved, the Revisionist had approached this Board for Revision and hence this proceeding.</p> <p>The Learned Advocate of the Revisionist further claims that the Pre-emptor is neither a Co-sharer nor a boundary raiyat and the land purchased is for homestead purposes and hence Pre-emption is not maintainable. He further argues that the Learned Collector dismissed his appeal not on merits and without restoring the appeal, which was dismissed for default on 27.07.2001.</p> <p>The Learned Advocate further claims that the Revisionist is in possession of the land. He however admits that he is not related to the vendor or the Pre-emptor.</p> <p>Having heard the Learned Advocate of the Revisionist and having perused the documents available on record as well as written arguments submitted by the OP who is the Pre-emptor, my own findings on the matter are as under:-</p> <p>(a) While it is true that Learned Collector, Siwan should have first restored the case of appeal, which was dismissed for default, however it is merely a procedural</p>	

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	<p>requirement for which the ends of justice should not be ignored.</p> <p>(b) In fact, I also note that the Restoration was not allowed by the Learned Collector by his order dated 15.04.2005 and he proceeded to pass the order on merits and dismissed the appeal vide order dated 12.05.2005. Without going into the procedural aspects, I hold that the Learned Collector was correct in disposing the appeal on merits rather than falling for procedural aspects in a dispute which was going on for more than 10 years in his Court.</p> <p>(c) From the perusal of the record it is also clear that the vendor and the Pre-emptor are full brothers.</p> <p>(d) It is also clear that the disputed land is 2 katha which is too small in area to carry out any meaningful agriculture in itself unless the adjoining area is also having agricultural activity.</p> <p>(e) I also find that the vendor and the Pre-emptor, both being full brothers, have got their respective properties through a</p>	



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	<p>family partition. In the said family partition, the four brothers (one is the vendor, one is the Pre-emptor and two others) have got 3 katha 7.5 dhur each.</p> <p>(f) After this partition had been formalised, it is clear that all the four brothers are enjoying their share in the hereditary property independently. That be the case, the Pre-emptor ceases to be a Co-sharer given the fact that family partition had happened. Therefore, there is no Co-share in the dispute and only thing remained to be adjudicated is the adjacency.</p> <p>(g) Of the 3 katha 7.5 dhur which the vendor got, he sold 2 katha to the Revisionist and remaining 1 katha 7.5 dhur to the brother (Pre-emptor) himself. It is also evident that the Pre-emptor got this 1 katha and 7.5 dhur one year after this sale deed of the disputed plot of 2 kathas was executed with the Revisionist. Thus, Pre-emptor cannot claim adjacency in view of a purchase which was one year after the first purchase of 2 kathas. Thus, as on the date of sale deed of the disputed plot, the Pre-emptor was not the adjacent raiyat by</p>	

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	<p>virtue of the land purchased from his brother.</p> <p>(h) Therefore, the brother Pre-emptor is not content with having got 1 katha 7.5 dhur land from his brother. He wanted the remaining 2 katha also which his brother (vendor) sold to the Revisionist. Thus, I find that the behaviour of the Pre-emptor to be strange.</p> <p>(i) Though there is possibility that he an adjacent raiyat by virtue of his share in his father ancestral property. Therefore, I am willing to concede that Shankar Rai, the Pre-emptor is an adjacent raiyat but not a Co-sharer.</p> <p>(j) However, mere adjacency would not be sufficient cause for invoking the Pre-emption proceeding. It has been sufficiently indicated that the land use is for homestead purpose. I do not agree with the observation of the Learned DCLR that since the Revisionist has admitted that he is using the disputed land for keeping his <i>Naand, Khuta and Palani</i> and hence the disputed plot is being used for agricultural purposes.</p>	

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	<p>(k) In fact contrary should be the correct interpretation. If a land does not see a crop, then Pre-emption proceeding should not be invoked. For example, if a land is used for keeping for agricultural implement or parking a tractor then such of land cannot be said to be used for agricultural purposes within the meaning of Section 16 (3) of Bihar Land Ceiling Act, 1961. In the instant dispute, it has come out very clearly that the land use is purely non agricultural and for homestead purposes. Moreover, the area involved is only 2 kathas which is too small an area for under taking any meaningful agriculture. The Learned DCLR has therefore erred in holding that the land use is agricultural.</p> <p>(l) The Learned Collector too, while confirming the order of the Learned DCLR, has ignored the vital fact that the purported land use is non-agricultural and hence the Pre-emption proceeding shall not stand.</p>	

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	<p>Conclusion:</p> <p>From the above findings, it is clear that while the Pre-emptor OP is not a co sharer but certainly an adjacent raiyat. However, that in itself is not sufficient for initiating a Pre-emption proceeding as there are clear indications that the intended land use is non agricultural.</p> <p>If on the disputed plot, any agriculture implements are found, then this cannot be termed as agriculture use within a meaning of Section 16 (3). Nor such a case can be covered under the Pre-emption laws.</p> <p>Section 16 (3) is very clear and the facility is available to only such raiyats who <u>cultivate</u> that land. If it is found that agriculture implements or tractors are parked on a piece of land, then it cannot be called an agricultural use within in the meaning of Section 16 (3). Section 16 (3) window is available to a land which is used or likely to be used for <u>cultivation</u>.</p> <p>If the land use is for any other purpose, then Section 16 (3) should not be invoked. The Revenue Authorities should be discreet in invoking the Pre-emption laws on small pieces of plot which are likely to be used for homestead or other non-agricultural purposes. The spirit of Section 16 (3) is to avoid the fragmentation of the agricultural holding with the</p>	

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	<p>intention of promoting mechanised agriculture and ease of supervision for a raiyat. Under this section, the State should not be allowed to interfere on small land transactions which are intended for non-agriculture purpose.</p> <p>That be the case, I find it difficult to uphold the order of the Learned Collector, Siwan. Accordingly, the same set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	