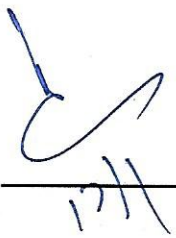
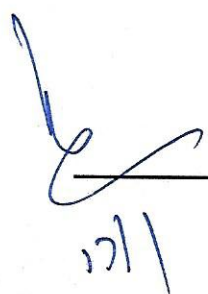


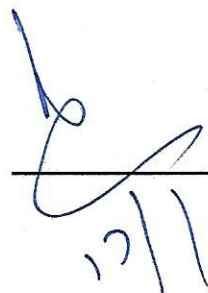
| आदेश की क्रम सं०<br>और तारीख | <p style="text-align: center;">आदेश और पदाधिकारी का हस्ताक्षर<br/>1<br/>2</p> <p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.:- 140/2006<br/>Dist.:- East Champaran</p> <p>PRESENT :- K.K. Pathak, I.A.S.,<br/>Additional Member</p> <p>=====</p> <p>Indradeo Singh - Petitioner/ Appellant<br/>Versus<br/>Raksha Bhagat &amp; Others - Opposite party<br/>=====</p> <p><b><u>Appearance:</u></b><br/>For the Appellant/Revisionist :Shri Suresh Mishra<br/>For the OP :Shri Rajesh Kumar</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>17.01.2017</p> <p>This is a Pre-emption Case in which Revision application was filed on 21.07.2006 against the order passed by the Learned Collector, East Champaran on 24.03.2006 in Ceiling Appeal Case No. 81/2002-03. On 25.10.2007, the case was dismissed for default. Subsequently, a Restoration Petition was filed but it was found to be hopelessly time barred by the then Additional Member, Board of Revenue and the same was rejected vide order dated 23.06.2010.</p> <p>Aggrieved at this order, the Petitioner who is the Pre-emptor approached the Hon'ble High Court in CWJC No. 15346/2010. The Hon'ble High Court, vide its order dated 17.01.2012, remanded the matter back to the</p> | आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित<br>3 |
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|                              | <p>Board of Revenue for disposal on merits in accordance with law.</p> <p>Subsequent to the direction of the Hon'ble Court, the matter was resumed for hearing. The Lower Court Records were also received on time. The case remained part heard on many dates. The matter finally came up for hearing on 10.01.2017 where the Learned Advocate of the Petitioner and the Learned Advocate of the OP were heard in detail.</p> <p>The Learned Advocate of the Petitioner filed a written note of arguments and some judgements. The Learned Advocate of the OP also filed fresh notes of argument and some judgements.</p> <p>Thus concluding the hearing, the order is being passed today. As per the Learned Advocate of the Petitioner Pre-emptor, 4 katha land was sold by the vendor (OP No.2) to vendee (OP No. 1) from plot No. 886. He admits that he is neither related to the vendor or the vendee and is only an adjacent raiyat.</p> <p>Continuing his argument, the Learned Advocate of the Pre-emptor Revisionist mentioned that he filed a Pre-emption application in the Court of the Learned DCLR who vide order dated 12.02.2002 rejected his application on the grounds that the vendee is a landless person and land purchased is a homestead land.</p> <p>He further avers that there is no evidence to suggest that the vendee is a landless person and in his supplementary affidavit, he is filed papers to show that the vendee has more than 1 acre land. Moreover, the sale deed</p> |  |



| आदेश की क्रम सं०<br>और तारीख | आदेश और पदाधिकारी का हस्ताक्षर<br>2   | आदेश पर की गई<br>कार्रवाई के बारे में<br>टिप्पणी तारीख सहित<br>3 |
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|                              | <p>itself mentioned that the land is an agricultural land and not a homestead land.</p> <p>Aggrieved by the order of the Learned DCLR, he had approached the Learned Collector, Motihari who too by an order dated 24.03.2006, rejected the appeal and hence he has preferred this Revision application.</p> <p>The Learned Advocate of the OP mentioned that he is the purchaser and he purchased the land for homestead purposes. He draws the attention of this Court to page 19 of the order passed by the Learned DCLR saying that the land is for homestead purposes.</p> <p>Both the parties have filed counter affidavit and replied thereon. Based on the argument forwarded by the Learned Advocate of both the sides and having perused the material available on record as well as the Lower Court Record, my own findings on the dispute are as under:-</p> <p>(a) The area of the disputed land is 4 kathas, which though by Indian Standards, is suitable for agricultural activity but would not be sufficient for taking any meaningful agriculture.</p> <p>(b) While it is clear that the OP may not be entirely landless and he may have land in excess of 1 acre, as is evident from the papers submitted by the Pre-emptor, it cannot be ruled out that pursuant to any partition, the OP may actually become a landless person within the meaning of our Revenue laws. It has been mentioned that the OP has property in Motihari as well as Gopalganj district. This fact has been adequately addressed by the Learned</p> |  |

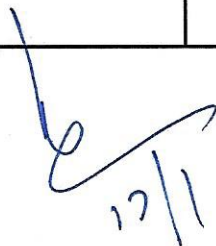


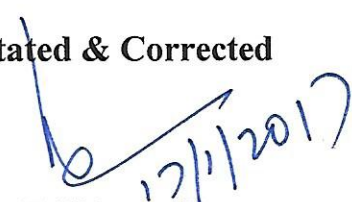
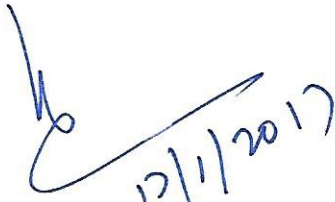


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|                              | <p>DCLR that once the total land was duly partitioned, the OP has become a landless person as is evident from the partition done by the village Panchayat on 05.05.1979.</p> <p>(c) However, the more important issue is not whether the OP is landless person or not. The issue at hand to be decided is whether the land use is residential or not. As per the Revenue records and inspection of the Anchal Amin, Trikaulia, the disputed land is in possession of the OP where he has a residential house in the nearby plot.</p> <p>(d) Furthermore, it has come out very clearly in a proceeding under Section 107 CrPC that the disputed plot has already seen violent clashes between the two parties. As per the police report dated 17.10.2001, it is evident that there is a structure standing on the disputed plot which has been erected by the OP. Now it may be contended that the said structure may have been erected in order to defeat the Pre-emption laws. However, there has not been any proof by the Police Authorities to suggest that possibility.</p> <p>(e) It is also evident that the said area has enough houses in the vicinity and the petitioner himself has a house within the vicinity which suggests that the area, in general, is under residential occupation and perhaps is expanding in order to accommodate rising population.</p> <p>(f)</p> |  |

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| आदेश की क्रम सं०<br>और तारीख | आदेश और पदाधिकारी का हस्ताक्षर<br>5<br>2   | आदेश पर की गई<br>कार्रवाई के बारे में<br>टिप्पणी तारीख सहित<br>3 |
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|                              | <p><b>Conclusion:</b></p> <p>From the above findings it is clear that the land use is generally residential in the disputed plot as well as the surroundings. However, it cannot be safely held that the OP is a landless person. A person may have two or more houses but can still claim to be a landless person within the strict definition of the Revenue laws. However, we are not supposed to base our findings on a very conservative reading of Revenue laws. When we say that a person is a landless person and hence Pre-emption laws are not applicable for a land which he wishes to purchase for construction of house, we obviously mean that the person is poor.</p> <p>Whereas a person may be a landless person but nevertheless a rich person with two or more houses. The OP perhaps lies in this category where he is rich person with houses in two different districts but as per the strict revenue laws, he may technically be a landless person. Therefore, it will not correct to hold that the OP is a poor person and a landless person and hence Pre-emption laws should not apply.</p> <p>However, I would like to dwell upon the more important issue as to the land use of the disputed plot. It has been sufficiently proved that the disputed plot as well as the vicinity has various houses. Even the Pre-emptor has a house nearby. This fact has come out very clearly in the report of the Amin as well as the report of the Police Station. Thus, the Pre-emption laws need not be invoked in a situation where the land is purchased by any person for homestead purposes.</p> |  |



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|                              | <p>The State need not interfere needlessly in any transaction where the vendor and the vendee decide to transact a piece of land for non agriculture purpose. To that extent, I find that the Learned DCLR and the Learned Collector have correctly rejected the Pre-emption application.</p> <p>Very strict reading of Pre-emption law with a tunnel vision would leave no person with the freedom to buy a piece of land wherever he pleases. If we keep invoking Section 16 (3) of Bihar Land Ceiling Act, 1961 on such small pieces of land, where the declared and visible purpose of the land use is residential, then we are generating unnecessary litigation.</p> <p>Having said that I find no reason to interfere in the order of the Learned Collector and the Learned DCLR.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><b>Dictated &amp; Corrected</b></p>  <p><b>K.K.Pathak</b><br/>Additional Member<br/>Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p><b>(K.K.Pathak)</b><br/>Additional Member<br/>Board of Revenue, Bihar.</p> </div> </div> |   |