

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
21.12.2016	<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.- 153/2006 Dist.- Vaishali</p> <p style="text-align: center;">PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p style="text-align: center;">=====</p> <p style="text-align: center;">Smt. Meena Devi - Petitioner/Appellant</p> <p style="text-align: center;">Vs.</p> <p style="text-align: center;">Vishwanath Singh & Others - Opposite Party</p> <p style="text-align: center;">=====</p> <p style="text-align: center;"><u>Appearance:</u></p> <p>For the Appellant/Revisionist : Sri Satya Narayan Singh For the OP : Sri Pathak Dhananjay Kumar</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption case filed on 09.08.2006 against the order of the Learned Collector Vaishali in Ceiling Appeal No 06/2003-04. The Case was admitted and the delay condoned on 05.11.2009. Since then the case was part heard on many dates. On 04.11.2010 the case was dismissed for default as no party was appearing in the past many dates.</p> <p>Restoration Application was filed on 04.10.2011 and the case was subsequently restored. Since then, the case continued for many dates and finally on 30.09.2014, the then Learned Additional Member held that the Petitioner is merely dragging the case and</p>	

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	<p>hence he dismissed the petition refusing to interfere with the order of the Learned Collector of Vaishali.</p> <p>Subsequently on 30.12.2014, the Petitioner again filed the Restoration Petition. The then Learned Additional Member vide order dated 29.01.2015 restored the case and since then various dates have been given. The Case came up for hearing on 08.12.2016 where the Learned Advocate being unwell sought a short adjournment. The OPs were absent. The Case was put up for final hearing on 19.12.2016. Final hearing took place 19.12.2016 where the Learned Advocate of the Revisionist was heard in detail. He wanted to file written notes of argument which he was allowed. The OPs were absent.</p> <p>Thus, the hearing having been concluded this order is being passed.</p> <p>As per the Learned Advocate of the Revisionist who is also the Pre-emptor, he had filed a Pre-emption application with the Learned DCLR Vaishali against the transfer of land by OP No 1 to OP No 2 on 16.02.2002. The Learned DCLR however rejected the Pre-emption application by order dated 15.03.2003. Aggrieved by this order, the Revisionist approached the Court of the Learned Collector who, however, upheld the order of the Learned DCLR. Further aggrieved, he has preferred this Revision.</p> <p>As per the Learned Advocate of the Revisionist, he is the boundary raiyat from two sides of the disputed land whereas the DCLR has mentioned that he is not an adjacent raiyat. OP No 1</p>	

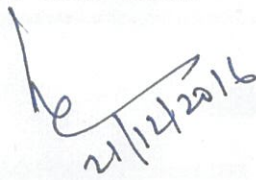
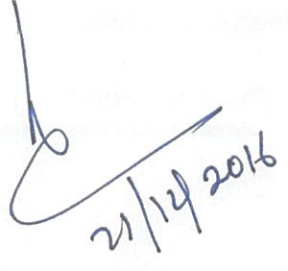
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	<p>sold the land to OP No 2 having an area of 6^{3/4} decimal. He further mentions that OP No 1 and 2 are not related neither the Revisionist is related to OP No 1 and 2. In fact, the OP No 2 is a stranger and where as the Revisionist is an adjacent raiyat since 25.10.1989 and hence the disputed sale deed dated 16.02.2002 should have been executed with him being an adjacent raiyat.</p> <p>Having heard the Learned Advocate of the Revisionist and perused the documents available on record as well as the Lower Court Records, my own findings are as under :-</p> <p>(a) The contention of the Revisionist that the Learned DCLR did not treat him as an adjacent raiyat is not correct. The Revisionist has failed to prove convincingly that he is an adjacent raiyat whereas the OP has established that he is an adjacent raiyat by virtue of the purchase of 6 Dhur of land from the khatiyani raiyat on 19.10.2002. That be the case, even if I assume and give benefit of doubt to the Revisionist and presume that he too is an adjacent raiyat, even then the case would not be in his favour. This is because this dispute would then become a dispute between two adjacent raiyats (none being a Co-Sharer) and in that case pre-emption shall fail if the vendee is an adjacent raiyat.</p> <p>(b) From the area of the land under dispute, it is evident that the land is purportedly being used for residential purposes, a fact admitted by the OPs. It is clear that the original family land was only 16 decimal and of which 5</p>	

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	<p>decimal came in the share of OP No 1 who sold this land to OP No 2. The remaining 6 dhur land was purchased by OP No 2 from OP No 1. Such small transaction of land can only indicate that the land in question is too small for any agriculture activity.</p> <p>(c) From the perusal of the replies filed by the Opposite Party, it is evident that they have purchased the land for residential purposes a fact which has not been denied by the Revisionist.</p> <p>(d) I also take note of the report of the concerned police station submitted to Learned SDM Hajipur regarding disruption of peace in the area between the two parties and the imposition of the section 144 CrPC. From the report of the ASI, Bidhupur Thana, it is evident that the Revisionist is living in the area and his only objection to the entire transaction is that if the OP No 2 starts construction of his house, then his (Revisionists') 'right of way' to the nearest road shall be blocked and it appears that due to this reason, the Revisionist has taken recourse to section 16(3) of the Bihar Ceiling Act, 1961 for stopping the OP No 2 from the construction of his house.</p> <p>From the above findings, it is abundantly clear that this is a residential area and the dispute is also related to right of way. That be the case, the Revisionist is advised to approach the Learned SDM under section 133 CrPC rather than take recourse to the ceiling Laws. Section 133 CrPC is more appropriate forum for</p>	

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	<p>resolution of such disputes as it affects the peace of the area as is evident from the report of the Police Station. The Pre-emption laws shall not hold good for solving residential disputes.</p> <p>Revision Dismissed.</p> <p>Dictated & Corrected</p> <p> 21/11/2016</p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> <p> 21/11/2016</p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p>	