

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

BOARD OF REVENUE, BIHAR, PATNARevision (Land Ceiling Pre-emption) Case No - 155/2005
District - Siwan**PRESENT :- K.K. Pathak, I.A.S.,
Additional Member**

Sri Ramesh Yadav & Others

- Petitioner/Revisionist

Versus

Sri Babban Chaudhary & Others

- Opposite Party

Appearance

For the State

:

For the Appellant/Revisionist

: Raghav Prasad

For the OP

: Kamla Kant Tiwary

ORDER


15.02.2018

This is a Revision application filed on 20.07.2005 against the Order passed by the Learned Collector Siwan on 17.04.2005 in Land Ceiling Case No. - 371 on 1997-98.

The then the Hon'ble Additional Member vide Order dated 20.03.2012 dismissed the case for default and noted the negligence of the Revisionist is not proceeding with this case as per the provisions of the law.

Aggrieved at this Order, the Revisionist filed a Writ namely, CWJC No. - 21868/2012, wherein the Hon'ble High Court, vide Order dated 25.07.2017, remanded the matter back to the Board of Revenue with a direction that matter may be heard again and if the vendor does not appear,

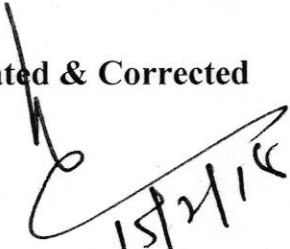
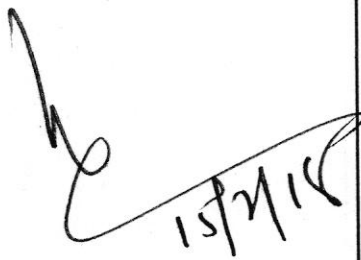
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	<p>then the Board of Revenue may proceed to hear the case without the vendor.</p> <p>Accordingly, this case was again reinitiated and notices were issued to all concerned. Learned Advocate of the Revisionist as well as the Pre-emptor were heard in great detail and thus concluding the hearing, this Order is being passed today.</p> <p>As per the Learned Advocate of the Revisionist, his father Sri Ram Sundar Yadav had purchased this land and the sale deed was registered on 06.11.1992. His father gifted the land to Srimati Maya Devi, who is a family member, on 21.01.1991 and the gift deed was registered on 26.02.1992.</p> <p>Continuing the arguments further, the Learned Advocate mentioned that the Pre-emptor OP filed a Pre-emption application before the Learned SDO on 27.01.1993 against the sons of Sri Ram Sundar Yadav whereas Sri Ram Sundar Yadav was alive at the time of pre-emption. Hence he claims that no valid pre-emption was made and therefore, pre-emption is not maintainable.</p> <p>Further, he says that the Learned SDO passed an Order in favour of the Pre-emptor and allowed the pre-emption. Aggrieved at this Order, the Revisionist appealed before the Learned Collector Siwan, who without applying his judicial mind, dismissed the appeal and imposed a penalty of Rs. 30000 on the Revisionist.</p>	

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	<p>He came in appeal before the Board of Revenue where the Hon'ble Additional Member dismissed the case for default.</p> <p>Concluding his arguments, the Learned Advocate mentioned that the disputed land is surrounded by numerous houses and is being used for residential purpose and hence pre-emption does not apply.</p> <p>The Learned Advocate of the Pre-emptor OP was also heard in great detail. He mentions that the Vendee (Revisionist) had gifted the property to his own daughter Maya Devi even before the sale deed was registered in his own name.</p> <p>The Learned Advocate further mentions that the Pre-emptor is an adjacent raiyat by virtue of the sale deed executed in 1979 with respect to Khata No. - 811 Khasra No. - 2516 having an area of 2.5 Kathas. Its boundaries mention that he is an adjacent raiyat from the southern side. Moreover, from the sale deed in question, it is evident that he is the adjacent raiyat from the eastern side.</p> <p>The Learned Advocate of the Pre-emptor OP further mentioned that an inquiry was conducted by the Circle Officer on 04.06.1993 which mentioned that the Vendee is not a boundary raiyat and he has put a <i>Palani</i> just 3 or 4 days before the enquiry.</p>	

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	<p>Concluding his arguments, the Learned Advocate mentioned that this land is being used for the agriculture purposes and at the time of the pre-emption case, there were no residences. Moreover, he has made Sri Ram Sundar Yadav a party in the original Court and made a Maya Devi also a Party.</p> <p>After having heard both the Learned Advocates and having perused the papers available on record, my own findings on the matter are as under:-</p> <p>a. As per the Revisionist's own admission, the sale deed in dispute was registered on 06.11.1992, however, he gifted the land to his daughter before the deed could be registered. The gift was made on 27.01.1991. Therefore, the gift deed itself is an illegal document as the Revisionist cannot gift away a property which is not in his name at the time of the gift.</p> <p>b. This was done to obviate the pre-emption proceedings and hence perhaps the gift deed was executed with an ulterior motive.</p> <p>c. I have also perused the inspection report of the Circle Officer dated 04.06.1993 and which confirms the averments made by the Learned Advocate Pre-emptor OP.</p>	

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	<p>The report establishes that the pre-emptor is an adjacent raiyat from the east and the north. Moreover, the report clearly mentioned that the Revisionist is no where the adjoining raiyat of the disputed plot.</p> <p>d. I also find that Sri Ram Sundar Yadav was made a party before the original Court of Learned SDO Siwan. Therefore, it is difficult to agree to the averments made by the Learned Advocate of the Revisionist that Sri Ram Sundar Yadav was not a made a party by the Pre-emptor OP.</p> <p>e. Coming to the other issue that the land is being used for residential purpose or not, I find that there is no evidence to confirm the averments made by the Revisionist that he had purchased the land for residential purposes. The sale deed does not mention anything about the residential use of the disputed plot. Moreover, the area of the plot is sufficiently large (2 Kathas and 08 Dhur) to be used entirely for residential purposes.</p>	

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	<p>f. I have also perused the Order of the Learned Collector, Siwan. I do not agree with the averments made by Learned Advocate of the Revisionist that the Learned Collector Siwan did not apply his judicial mind. I find the Order to be a speaking Order where the Learned Collector has applied his judicial mind and has given reasons for confirming the Order of the Learned SDO.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the Vendee Revisionist has not been able to prove that the land is entirely used for residential purposes. Moreover, he tried to execute a gift deed in favour of his daughter even before he himself became a valid owner of the plot, with a mala fide intention of defeating the pre-emption.</p> <p>This adequately proves that the gift deed was only an eye wash to defeat the provision of the pre-emption law.</p> <p>Moreover, the Order of the original Court of the Learned SDO and inspection report of the Circle Officer clearly proves that the Pre-emptor is an adjacent raiyat whereas the Vendee Revisionist is not.</p> <p>The Order of the Learned Collector therefore, is a speaking Order and the Learned Collector Siwan has upheld</p>	

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	<p>the order of the Learned SDO Siwan and has given detailed reasons for doing so. Therefore, I am not inclined to interfere with the order passed by the Learned Collector, Siwan. However, the penalty of Rs. 30000 levied by the Learned Collector Siwan on the Revisionist is waived.</p> <p>Revision dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  Dictated & Corrected (K.K.Pathak) Additional Member, Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member, Board of Revenue, Bihar. </div> </div>	