

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.:- 16/2006

Dist.:- Samastipur

PRESENT :- **K.K. Pathak, I.A.S.,**
Additional Member

Tej Narayan Sharma - Petitioner/ Appellant

Versus

Sheo Dayal Sharma & Others - Opposite party

Appearance:

For the Appellant/Revisionist : Shri Sachhidanand Choudhary

For the OP : Shri Yogendra Prasad Singh

ORDER

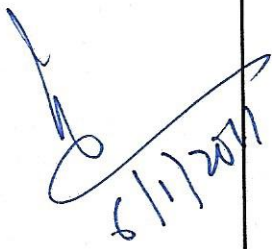
06.01.2017

This is a Revision Application filed against the order passed by the Additional Collector, Samastipur on 19.12.2005 in case no 127/2004-05. The Revision case was filed on 19.01.2006 and the case was admitted for hearing on 11.11.2006. Since then the case remained part heard. On 21.01.2010, the case was dismissed for default as the Revisionist was not appearing for the last many dates. Subsequently, a Restoration Petition was filed and on 18.08.2010, the Restoration Petition was allowed.

Again the case remained part heard on many dates. Again the case was dismissed for default second time on 10.09.2015. Once again a Restoration Petition was filed

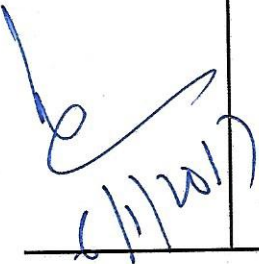
आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>along with the limitation Petition. The Restoration was allowed on 16.02.2016.</p> <p>Finally, the case came up for hearing on 27.12.2016. On that date, the Learned Advocate of the Petitioner was present but sought a short date for hearing. Accordingly, the matter was posted on 30.12.2016 for final hearing. On 30.12.2016, again to the dismay of the court, the Petitioner was again absent in spite of clear directions on the previous date.</p> <p>However, the Learned Advocate of the OP was present and he was heard in great detail. Since the case has been going for the last 11 years, this court was not inclined to give any further adjournment and therefore this final order is being passed today.</p> <p>As per the Learned Advocate of the OP, he is the purchaser of the land. The Revisionist is the Pre-emptor. The Learned Advocate of the OP says that he is the adjoining raiyat from the western side of the disputed plot as his house lies in the west of the disputed land. He has purchased this land for construction of house from the vendor Sri Mahavir Sharma. He admits that he is neither related to the vendor nor to the Pre-emptor.</p> <p>As per the Learned Advocate of the OP, the area of the land is very small 1 katha (1620 sq. ft). The Plot No. of the disputed land is 4449. His house is located in adjoining Plot No. 4448. He purchased the land on 21.02.2003 and since then he is in peaceful possession of the land. He claims that there are many houses in the vicinity and the purpose of buying this land is purely residential.</p>	

6/1/2017

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	<p>I have perused the material available on record as well as the order passed by the Learned Lower Court. From the perusal of the documents and the application of the Revisionist and averments made by the Learned Advocate of the OP, my own findings on the matter are as under:-</p> <p>(a) That the land in question was transacted on 21.02.2003 upon which the Pre-emptor (the Revisionist) filed an application before the Learned DCLR. The Learned DCLR vide order dated 05.10.2004 allowed the Pre-emption. Thus aggrieved by the order of the Learned DCLR, the purchaser appealed before the Learned Additional Collector who set aside the order of the Learned DCLR and hence the Pre-emptor, having lost the case before the Learned Additional Collector, filed this Revision Application.</p> <p>(b) As per the voter list, it is the evident that OP Shiv Dayal Sharma and another one Vishnu Dayal Sharma and others have houses in the vicinity. The Learned DCLR has erred in ignoring the fact that the locality is largely residential and there are houses in the vicinity. There is an affidavit of one Md. Anzar and Md Nizamuddin before the Learned Court of DCLR that they have houses in the vicinity of the disputed plot.</p> <p>(c) I also find that the disputed plot has been a source of tension between the two parties as is an evident from the report of the Sub Inspector of Muffasil PS dated 12.05.2003. From the report it appears that</p>	



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	<p>apparently, the Revisionist and the vendor are related and there is a property disputed between them. During the pendency of the dispute, the vendor chose to sell this plot to the OP. Thus apparently the Revisionist claims that he is both a Co-sharer as well as adjoining raiyat. And vendor, though related to him did not sell the land to him but sold it to the OP who is an outsider.</p> <p>(d) It also appears that the land under dispute is also having dispute of civil nature and perhaps the absence of formal partition of the joint property between the vendor and the Pre-emptor is a reason for this disputed under Pre-emption as well.</p> <p>(e) The Learned DCLR therefore erred in ignoring the vital aspect that the dispute is essentially civil in nature and this proceeding under Section 16 (3) is merely fallout of the family dispute between the vendor and the Pre-emptor.</p> <p>(f) I find that the Learned Additional Collector has held that the disputed land is residential and there are various affidavits in support thereof. It is also clear that the OP is in possession of the land and the purpose of purchasing the land is purely residential. And therefore, he has held that since the intended use of the plot is residential, Section 16(3) of Bihar Land Ceiling Act, 1961 does not apply on residential plots and therefore, vide his order dated 19.12.2005, he over turned the order of the Learned DCLR and rejected the Pre-emption.</p>	

6/1/2017

आदेश की क्रम सं० और तारीख	<p style="text-align: center;">5 आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>
	<p>(g) In the Revision Application of the Pre-emptor, it is mentioned that the vendor and Pre-emptor are related and the land is still under joint ownership. Para 14 of the Revision Application also mentioned that there has been a separation of the properties. This also indicates that all the four brothers have houses in and round the disputed plot.</p> <p>(h) Apparently the joint ownership or otherwise, of the disputed plot 4449, is disputed by the Revisionist. As per him, all the four brothers have their shares in plot 4448 which is adjoining to the disputed plot 4449. In my view, this court is not the competent court to decide the title and the ownership or the the partition of ancestral property. However, if the Revisionist felt that the plot which was sold to the vendee is not fully partitioned and that plot is jointly shared by all the four brothers, then he should have approached a Civil Court rather than filing a Pre-emption case in the Revenue Court.</p> <p>(i) The Revisionist is also silent about the ownership of the plot in question, Plot No 4449. In the same application he claims that he is Co-sharer with the vendor and at the same time he claims that the common ancestral properties have been effectively separated. If a property has been effectively partitioned then there cannot be any Co-sharer. So the Revisionist should make up his mind whether he is a Co-sharer or not. If the property has not</p>	

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	<p>been partitioned, then if the disputed plot 4449 is still under joint ownership, then the Revisionist should approach a Civil Court to adjudicate on title and separation.</p> <p>(j) Therefore in the instance proceeding, the question is not whether the Pre-emptor is a Co-sharer or an adjacent raiyat to the disputed plot or not. The issue at hand is to decide whether Pre-emption proceeding would lie on this plot or not. The voter list, ironically submitted by the Petitioner himself, indicates that the area is eminently residential and the same has been supported by various affidavits by various parties as well as the report of the Mufassil Police Station. Thus, it can be safely concluded that this land of 1 katha, which is too small for undertaking any meaningful agriculture, is essentially for non agricultural purposes.</p> <p>Conclusion:-</p> <p>In the light of the foregoing analysis, it is clear that the land in the vicinity is purely residential and the intended use of the disputed plot, which is a small area of 1 katha (1620 sq. ft.) as has been rightly concluded by the Learned Additional Collector, is purely residential. That be the case, Pre-emption proceeding under Section 16 (3) of Bihar Land Ceiling Act, 1961 shall not lie in the first place and the Learned DCLR should not have allowed the Pre-emption. None of the parties to the dispute are 'raiyaats' as defined under Section 2 (k) of Bihar Land Ceiling Act, 1961</p>	

6/1/2017

आदेश की क्रम सं० और तारीख	<div style="text-align: center;">7</div> आदेश और पदाधिकारी का हस्ताक्षर <div style="text-align: center;">2</div>	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित <div style="text-align: center;">3</div>
	<p>to the extent that no party can meaningfully undertake agriculture activity in a plot having an area of 1620 sq. ft. The Plot is surrounded in abundance with houses all over therefore the intended use of the plot is residential.</p> <p>Having said that, I find no reason to interfere with the order of the Learned Additional Collector.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="389 792 791 1115"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="841 689 1246 1075">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	