

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में दिपणी तारीख सहित 3										
19.01.2017	<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.:- 180/2004 Dist.:- Jamui</p> <p style="text-align: center;">PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table style="width: 100%; border: none;"><tr><td style="width: 40%;">Reshmi Devi</td><td style="width: 20%; text-align: center;">Versus</td><td style="width: 40%; text-align: right;">- Petitioner/ Appellant</td></tr><tr><td>Mittu Mahto & Others</td><td></td><td style="text-align: right;">- Opposite party</td></tr></table> <p>=====</p> <p><u>Appearance:</u></p> <table style="width: 100%; border: none;"><tr><td style="width: 40%;">For the Appellant/Revisionist</td><td style="width: 60%;">:Shri Mithilesh Kumar Upadhyay</td></tr><tr><td>For the OP</td><td>:Shri Prakash Mahto</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision application was filed on 04.08.2004 against the order passed by the Learned Additional Collector, Jamui on 07.07.2004 in Ceiling Appeal No. 01/2002. The application was dismissed for default on 12.08.2004. Subsequently, a Restoration Petition was filed and the case was restored on 21.12.2004. Since then, the matter remained part heard on various dates.</p> <p>I also find that the party remained absent thereafter on many dates. This forced the then Learned Additional Member to again dismiss the case for default on 22.12.2000. Subsequently, a second Restoration application</p>	Reshmi Devi	Versus	- Petitioner/ Appellant	Mittu Mahto & Others		- Opposite party	For the Appellant/Revisionist	:Shri Mithilesh Kumar Upadhyay	For the OP	:Shri Prakash Mahto	
Reshmi Devi	Versus	- Petitioner/ Appellant										
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	<p>was filed and the same was allowed on 21.01.2012. Meanwhile, the Lower Court Records took time to reach.</p> <p>The matter finally came up for hearing 27.12.2016 where again both the parties were absent. A notice was issued that if there remained absent on the next date, the matter will be decided ex parte. Finally, the matter was adjourned for 13.01.2017. On this date both the parties were present and heard in great detail.</p> <p>Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he is the purchaser of the land who purchase 31 decimals of land for which sale deed was registered on 09.12.1999. Against this sale, a Pre-emption application was filed by the OP on 01.06.2000 before the Court of Learned DCLR. However, before the Pre-emption application was filed, the purchaser Revisionist sold 15 decimals of land to one Smt. Meena Devi on 13.05.2000, who is not related to the Revisionist.</p> <p>The Learned Advocate of the Revisionist further mentions that the application for Pre-emption has been barred by limitation before the Court of the Learned DCLR. Moreover, the Pre-emptor should have made Smt. Meena Devi should also a party which was not done.</p> <p>The Learned Advocate of the Petitioner further claims that presently, I am in the possession of remaining 16</p>	

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	<p>decimals of land in which I have constructed a house under Indira Awas Yojana which was allotted to him as he is a landless person. The Learned Advocate further mentioned that the Pre-emptor lost the case in the Court of Learned DCLR and then he went to the Learned Additional Collector who allowed the appeal and hence aggrieved by the Learned Additional Collector, the Petitioner has filed this Revision application.</p> <p>On the other hand, the Learned Advocate of the OP, who is Pre-emptor, claims that he is a Co-sharer as well as the adjacent raiyat. When he filed the Pre-emption application before the Learned DCLR, the Learned DCLR dismissed the Pre-emption application on the ground of the limitation which was not correct. He further says that he is related to the vendor and the possession of the land is with him which he is using for the agricultural purpose.</p> <p>Having heard the Learned Advocates of both the sides, and after having perused the material available on record as well as the Lower Court Records, my own findings on the issue are as under:-</p> <p>(a) It is an admitted fact that the Pre-emptor is not only related to the vendor but he is also an adjacent raiyat to the disputed plot. This fact has been noted by the Learned DCLR also in his order dated 19.12.2000.</p> <p>(b) I do not agree with the Learned DCLR that just because the Pre-emption application was not filed</p>	

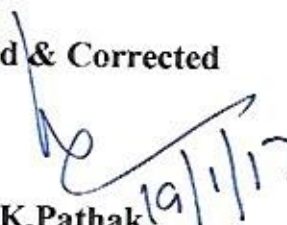

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	<p>in time, the case was fit to be dismissed. At times, a person may come to know of a land transaction much after it has happened. Therefore, the Learned DCLR should not have rejected the Pre-emption application merely on the grounds of limitation and should have proceeded to hear the matter on merits.</p> <p>(c) It is also an admitted fact that the original area of the disputed land, though was 31 decimals, 15 decimals was sold to another person by the Petitioner, this fact has not been denied by the OP.</p> <p>(d) It is also an admitted fact that there is a house standing on the disputed plot. As per the Petitioner, this house is constructed under the Government scheme of Indira Awas Yojana, which was sanctioned to him because he is a landless person. Though, he has not filed any documents to support that Indira Awas Yojana was sanctioned to him, this Court presumes that the Petitioner would not submit a blatant lie which can proved or disproved convincingly at a later stage.</p> <p>(e) However, regardless whether Indira Awas Yojana was sanctioned to him or not, a house is standing on the disputed plot which is an admitted position. This also means that the land use of the disputed plot is evidently residential in nature.</p>	

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	<p>(f) However, I find that the Revisionist has not raised the ground that he has a house on plot or that he was sanctioned a unit under the Indira Awas Yojana before any of the Learned Lower Courts. Thus, I find that this is a new ground which the Petitioner has raised before the Revisional Court.</p> <p>(g) Nevertheless, it has not been denied by the OP that the Petitioner has a house on the disputed plot.</p> <p>(h) I find that the remaining area of 16 decimal of plot is too less an area to carry out any reasonable agricultural activity.</p> <p>Conclusion:-</p> <p>From the above findings, although it is clear that the Pre-emptor OP is indeed the adjacent raiyat, however, it is also clear that the land use largely residential. That being the case, to my mind, Pre-emption laws cannot be invoked on land use which is non-agricultural.</p> <p>Given the very small area of plot (16 decimals) and given that there is a house standing on the disputed plot, I hold that no agricultural activity is either possible or intended on the disputed plot. Whether, the house has been built under the Indira Awas Yojana or not does not affect the material situation on the ground.</p> <p>The Learned Lower Courts were perhaps not made aware of this fact by the Petitioner and hence the Court of the Learned DCLR went about rejecting the Pre-emption</p>	

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	<p>application on the ground of limitation. Whereas, he should have rejected the Pre-emption application of the Pre-emptor on the ground that the intended use of land is residential and hence Pre-emption law as defined under Section 16(3) of Bihar Land Ceiling Act, 1961 cannot be invoked in the instant dispute.</p> <p>The Learned Additional Collector too perhaps has not seen that the area involved in too meagre and he went by a very limited concern of adjacency. Finding that the Pre-emptor is an adjacent raiyat, he allowed the Pre-emptor's appeal.</p> <p>However, since the land use is non-agricultural, the issue of adjacency does not arise because the Pre-emption law should not have been invoked in the instant transaction.</p> <p>That be the case, I find it difficult to support the order of the Learned Additional Collector dated 07.07.2004 and accordingly, the same is set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="371 1632 821 1928"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="825 1536 1225 1897">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	