



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										
<p>17.02.2017</p> 	<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. – 214-215/2005 Dist.- Jamui</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table style="width: 100%; border: none;"><tr><td style="width: 40%;">Devi Mahto and Others</td><td style="width: 20%; text-align: center;">Versus</td><td style="width: 40%; text-align: right;">- Petitioner/ Appellant</td></tr><tr><td>Md. Hadis & 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: 50%;">For the Appellant/Revisionist</td><td style="width: 50%;">: Shri Sanjeev Ranjan Gupta</td></tr><tr><td>For the OP</td><td>: Shri Ravindra Kumar Choudhary</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>There are two analogous cases before this Revision Court viz Case No. 214/2005 and 215/2005. Since, the issue are identical, the same have been amalgamated and a common order is being passed.</p> <p>This is a Pre-emption matter in which a Revision application was filed against the order of the Learned Additional Collector, Jamui on 23.06.2005 in Case No. 12/2001. The case was admitted for hearing on 03.10.2005. Due to the continued absence of the Petitioner, the case was dismissed for default on 03.11.2005.</p> <p>A Restoration Petition was filed after two years. The said Restoration Petition was also dismissed by the then</p>	Devi Mahto and Others	Versus	- Petitioner/ Appellant	Md. Hadis & Others		- Opposite party	For the Appellant/Revisionist	: Shri Sanjeev Ranjan Gupta	For the OP	: Shri Ravindra Kumar Choudhary	
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	<p>Learned Additional Member on 25.09.2007. However on review, the case was finally restored on 11.09.2008. Meanwhile, the Lower Court Records took time to reach. The case remained part heard on subsequent dates.</p> <p>The case finally came up for hearing on 16.02.2017. The Learned Advocate of the Petitioner, who is the Purchaser, was heard in great detail. I also heard the Learned Advocate of the OP who is the Pre-emptor. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he purchased the land from the vendor and the land is being used for agricultural purpose. He claims that he is an adjacent raiyat of the vended land by virtue of the earlier sale deed.</p> <p>Continuing with his arguments, he mentioned that the right of Pre-emption is a weak right. Moreover, when the Pre-emption application was filed before the Learned DCLR, Rule 19 of Bihar Land Ceiling Rules, 1963 was not followed. This required giving notices to the purchaser. The Learned DCLR, Jamui had dismissed the Pre-emption application, vide order dated 07.01.2002, finding that Rule 19 has not been followed.</p> <p>Aggrieved at this order, the OP Pre-emptor went in appeal before the Learned Additional Collector who, vide order dated 23.06.2005, set aside the order of Learned DCLR and allowed the appeal. The Learned Additional</p>	

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	<p>Collector did not give any cogent reasoning in his order while accepting his appeal which was also time barred.</p> <p>Concluding his arguments, the Learned Advocate further mentioned that the Pre-emptor is a Muslim and as per the Muslim Law, a son cannot be a raiyat during the lifetime of his father. Moreover, Pre-emption law is not applicable to Muslims. He files certain Court judgements in his support.</p> <p>I also heard the Learned Advocate of the OP No. 1 to 4 who are the Pre-emptors. As per him, the sale deed is having two sets of vendees. Vendors, however, are the same. Vendee No. 1 to 3 constituted first set and Vendee No. 4 constituted the second set. The Pre-emptor has no dispute with Vendee No. 4. He is challenging the Pre-emption with regard to Vendee No. 1, 2 and 3.</p> <p>The Learned Advocate of the Pre-emptor says that the area involved with Vendee No. 1 to 3 is 2.16 1/12 acres while the land with Vendee No. 4 is only 18 decimals. The land is being used for agricultural purpose.</p> <p>As per the Learned Advocate of the Pre-emptor, the vendors are two in number namely Md. Muslim and Sheikh Abdul Hamid. The Pre-emptor is related to the vendor and has share in the land since no partition had happened and the property is jointly held. Therefore, he is a Co-sharer as well as also the adjoining raiyat. The vendee, on the other hand, is neither a Co-sharer nor an adjacent raiyat.</p>	

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	<p>With regard to the adjacency of the vendee (Petitioner), the Learned Advocate of the Pre-emptor says that vendee claims to be owning Plot No. 1264. However, the said plot is far away from the disputed land and there are at least 100 plots between Plot No. 1264 and the disputed land. Therefore, the Petitioner cannot be an adjacent raiyat by any stretch of imagination.</p> <p>Concluding his arguments, the Learned Advocate of the Pre-emptor says that applicability of Mohamadan Law is not an issue at hand as this is not a civil case. This is a case under the Land Ceiling Act and the law of Pre-emption is applicable to all.</p> <p>Having heard the Learned Advocates of both the parties and having perused material available on record as well as the Lower Court Records, my own findings on the issue are as under:-</p> <p>(a) Admittedly, the Pre-emptor was not able to confirm whether the Pre-emptor is in the possession of the land. Therefore, it can be safely held that the land is in the possession of the Petitioner who is the purchaser.</p> <p>(b) Regarding the procedure required under the Pre-emption law, it is the contention of the Petitioner that notices under Rule 19 was not given to him by the Pre-emptor. Rule 19 (3) reads as under:-</p>	



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	<p><i>'(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgment due'.</i></p> <p>As per the opinion of this Court, the above procedure was inserted with the intention to insure that the vendor and the vendee are aware that a Pre-emption proceeding has been filed against their land transaction by the Pre-emptor so that they can be ready and prepared and defend the same.</p> <p>Not much should be read in to the Rule 19 if the said intimation is sent to the vendor and the vendee by the Learned original Court hearing the Pre-emption application. I find that the Learned Advocate of the Petitioner has included a judgement to this affect. However, the said judgement only mentioned that there was absence of <u>any</u> notice. Rule 19(4) required the Collector to also issue such a notice. Apparently, the said notice was not issued either under Section 19(3) or 19(4) in the judgement under discussion. In the instant dispute, however, the Learned DCLR (who is functioning as Collector under the Act) had issued the notice in terms of rule 19(4) and the Petitioner purchaser was given the opportunity to present his case and he did appear before the Learned DCLR. Therefore, absence of notice under Rule 19 should not be allowed to vitiate the proceeding because</p>	

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	<p>the spirit of 19(3) and 19(4) is that all the parties should be heard and given due opportunity to defend themselves. In the instant case, this was done by the Learned DCLR. Therefore, I do not agree with the averment made by the Petitioner that the proceeding is vitiated just because Rule 19(3) was not followed.</p> <p>(c) Now, I come to the other law point which was raised by the Learned Advocate of the Petitioner that the Mohamadan Law does not apply to Pre-emption law and therefore Pre-emptor, being a Muslim, cannot take shelter under the Pre-emption law as define under Section 16(3) of Bihar Land Ceiling Act, 1961. The Petitioner has filed certain judgments in this regard claiming that right of Muslim heir come into existence on death of his father. The other judgment mentioned that a Muslim son has no right or interest in property during lifetime of his father. Both the judgments (Air 1982 Patna 89 Imamul Hasan vs. State and Dasrath Sao vs. Additional Member Board of Revenue) are out of context in the sense that in these judgments, a Muslim raiyat is claiming a Pre-emption being a Co-sharer. The Learned Judges have only decided when a Muslim son becomes a Co-sharer or not. In the instant dispute, the averments of the Petitioner is not that Pre-emptor is a Co-sharer or not. The averment is here is that</p>	

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	<p>Pre-emption law per se cannot be invoked with respect of Muslims. Since, the Pre-emptor is a Muslim he is not entitled with the rights under Section 16(3).</p> <p>I would tend to disagree with the contention of the Petitioner that Muslims cannot invoke Section 16(3). The Bihar Land Ceiling Act, 1961 is a sovereign Act applicable to all the citizens of the state regardless of their religion. Whether a Muslim is a Co-sharer or not shall be decided as per the Mohamdan Law which issue cannot be decided by this Court as this Court is competent to go into the rights on the properties held by Muslims. If this Court were to interpret the succession under the Mohamadan Law, then I will be entering into unchartered territory and rushing into conclusion beyond the competency of this court. Whether or not the Pre-emptor is a Co-sharer as per Mohamadan Law is a issue best dealt by Civil Court. Therefore, this court is not giving any findings with regard to the issue whether the Pre-emptor is a Co-sharer or not.</p> <p>(d) Moreover, the said judgement only says that Mohamdan Law do not apply the Pre-emption under the Ceiling Act and not vice-versa. Therefore this being a ceiling case, we are not here deciding that who will be Co-sharer as per the Muslim Law. We will only decide the right of Pre-emption</p>	

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	<p>within the four walls of Land Ceiling Act. That being the case, I find that the judgements mentioned by the Learned Advocate have been quoted out of context.</p> <p>(e) Therefore, I would steadfastly avoid giving any findings on the issue whether the Pre-emptor is a Co-sharer or not. I would only confine myself into deciding whether the Pre-emptor is an adjacent raiyat or not.</p> <p>(f) Now coming to the issue of adjacency, whether or not, a partition between the vendor and the Pre-emptor had happened, it can be certainly said that the Pre-emptor has not been able to prove that he is an adjacent raiyat. The Pre-emptor has filed a copy of survey map which shows that the vendees are not the Co-sharer. That argument would not help the case of the Pre-emptor as the onus is on him to prove that he is the adjacent raiyat. None of the papers indicate that the Pre-emptor is the adjacent raiyat. Thus, the Pre-emptor has not convincingly proved his case.</p> <p>(g) I also find that the Learned Additional Collector has held the Pre-emptor to be an adjacent raiyat. However, he has held the Pre-emptor to be an adjacent raiyat on account of his being a Co-sharer with the vendor. This would be a fallacious argument because, just being a Co-sharer does not</p>	

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	<p>mean that the person is also an adjacent raiyat. A Co-sharer can become an adjacent raiyat only when there is a formal partition and as a result of that partition, the Pre-emptor gets a plot which is adjacent to the disputed plot. In the instant matter, no evidence has been produced by any party to suggest that there is a formal partition between the vendor or the Pre-emptor. In fact, Pre-emptor is claiming that the partition has not happened and the property is under 'joint possession'.</p> <p>Conclusion:-</p> <p>From the foregoing findings, it is clear that it cannot be said with certainty that the Pre-emptor is a co sharer or an adjacent raiyat. The issue in any Pre-emption proceeding is not to decide whether the vendee is a Co-sharer/adjacent raiyat or not. The issue in a Pre-emption proceeding is to decide whether the claim of the Pre-emptor is strong or not and he is a co-sharer or a adjacent raiyat.</p> <p>In the instant proceeding, as already noted above, this Court has not ventured into deciding whether the Pre-emptor and the vendors are Co-sharers as per Mohamdan Law or not. That issue is best dealt by a Civil Court. This Court would only therefore confine itself with the issue of adjacency of the Pre-emptor with the vended land.</p> <p>The Pre-emptor, to my mind, has not been able to prove convincingly that he is an adjacent raiyat. In fact, I find that even the Learned Additional Collector has not</p>	

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	<p>mentioned any other reason for holding the Pre-emptor as an adjacent raiyat except that the Pre-emptor, as per the Learned Additional Collector, is a co sharer of the vendor.</p> <p>Being a Co-sharer and being an adjacent raiyat are two different things. A Co-sharer may not be an adjacent raiyat and that will only depend after a formal partition is done. Therefore, any findings regarding adjacency based on Co-sharer concept is erroneous in the present dispute.</p> <p>That be the case, I find it difficult to support the order passed by the Learned Additional Collector on 23.06.2005 and the same is hereby set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 100px;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	