

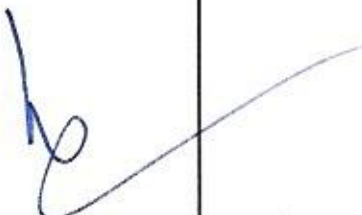
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का <sup>1</sup> हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
02.03.2017	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No . – 218/2004 Dist. – Araria</p> <p>PRESENT            :-    K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Md. Mustaque</td><td style="text-align: center;">Versus</td><td>- Petitioner/ Appellant</td></tr><tr><td>Md. Ainul &amp; Others</td><td></td><td>- Opposite party</td></tr></table> <p>=====</p> <p><b><u>Appearance:</u></b></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Rabindra Kumar</td></tr><tr><td>For the OP</td><td>:Shri Sarangdhar Jha</td></tr></table> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a Pre-emption matter in which a Revision application has been filed on 02.09.2004 against the order passed by the Learned Additional Collector, Araria on 26.07.2004 in Ceiling Appeal No. 49/1995-96. The delay in filing the Revision was condoned on 19.10.2004. The case was admitted for hearing on 02.11.2004. However, the case was dismissed for default on 20.12.2004 as the Petitioner was found absent.</p>	Md. Mustaque	Versus	- Petitioner/ Appellant	Md. Ainul & Others		- Opposite party	For the Appellant/Revisionist	:Shri Rabindra Kumar	For the OP	:Shri Sarangdhar Jha	
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	<p>Subsequently, a Restoration application was filed and the matter was restored on 01.02.2005.</p> <p>The case was again dismissed for default on 21.05.2005 for the second time. Again a Restoration Petition was filed which was rejected on 13.01.2010.</p> <p>Again a Restoration Petition was filed for the third time on 04.09.2014, after a gap of 3½ years, since the case was last dismissed.</p> <p>This Restoration Petition too was dismissed on 10.09.2015 due to continued absence of the Petitioner.</p> <p>Finally, another Restoration Petition was filed and the case was restored on 14.02.2017 and was place for hearing on merits for 21.02.2017. On 21.02.2017, the Learned Advocate of the Petitioner was present and heard in great detail. I also heard the Learned Advocate of the OP. Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he is the Pre-emptor and the lands involved in the dispute are as under:-</p> <p>Plot No. 1598-15 decimals Plot No. 1616-8 decimals Plot No. 1633-10 decimals Plot No. 1634-9 decimals</p>	

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	<p>As per the Learned Advocate, the total area involved in these four plots is 42 decimals. All the plots are contiguous and no plot is fragmented. He mentioned that he is both, a Co-sharer as well as adjacent raiyat, but admits that he is not related to the vendor Sri Rafique.</p> <p>The sale deed was registered in the year 1988 against which the Pre-emptor-Petitioner filed a Pre-emption application before the Learned DCLR who, vide order dated 08.09.1995, allowed his application.</p> <p>Aggrieved at this order, the OP Purchaser went in appeal before the Learned Additional Collector who vide order dated 26.07.2004 allowed the appeal. Thus further aggrieved, the Pre-emptor-Petitioner came in Revision before this Court and hence this proceeding.</p> <p>Concluding his remarks, the Learned Advocate of the Pre-emptor-Petitioner claims that he is in the possession of the two of above four plots namely 1633 and 1634 and he is carrying on agricultural activity in these plots.</p> <p>I also heard the Learned Advocate of the OP who is the Purchaser of the land. As per him, he had purchased the land on 10.09.1993. Though he concedes that he is related to the Pre-emptor, but he is not related</p>	

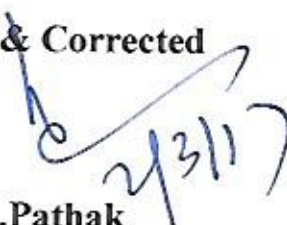



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	<p>to the vendor. As per the Learned Advocate of the OP, he is an adjacent raiyat.</p> <p>The Learned Advocate of the OP Purchaser also claims that he is in the possession of the all the four plots. He is using some land for agricultural purposes and some for keeping cattle.</p> <p>Having heard the Learned Advocates of both the sides and having pursued the material available on record, my own findings on the matter are as under:-</p> <p>(a) It appears that the Pre-emptor-Petitioner is the owner of Plot No. 1597 which is adjacent to disputed Plot No. 1598 and lies to the south.</p> <p>(b) It also appears that the Pre-emptor also owns Plot No. 1635 which lies south of the disputed plot 1633 and 1634.</p> <p>(c) With regard to the forth disputed plot 1616, it appears that the preceptor owns plot 1614 which is adjacent to plot 1616.</p> <p>(d) Thus from the above, it is established that the Pre-emptor is an adjacent raiyat with respect to all the four plots namely 1616, 1633, 1634 and 1598.</p>	

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	<p>(e) Now coming to the point whether the Purchaser OP is an adjacent raiyat or a Co-sharer or not, I find that no papers have been submitted by the OP to prove that he is an adjacent raiyat to any of the four plots in dispute. In his written note of arguments, the OP has only dwelt upon the fact that the Petition of the Pre-emptor has already been dismissed before and hence not maintainable. He has not raised any points of merit or mentioned anything which can prove that he is an adjacent raiyat. Nor any documents have been provided by the OP Purchaser which can prove that he is an adjacent raiyat.</p> <p>(f) In his arguments, he has claimed that he is a Co-sharer. He derives this conclusion from the fact that the Pre-emptor-Petitioner is the <i>pota</i> (paternal grandson) and the OP is the <i>nati</i> (maternal grandson) of the khatiyani raiyat. However, this would not be sufficient to conclude that the OP is a Co-sharer of the khatiyani raiyat Late Amir Baksh.</p> <p>(g) Moreover, the relationship between the vendor and the khatiyani raiyat is also not</p>	

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	<p>clear. Therefore, it will not be advisable to conclude on the basis of available evidence that the OP is a Co-sharer. To that end, I find that the Learned Additional Collector has erred in holding that the OP Purchaser is a Co-sharer.</p> <p><b>Conclusion:-</b></p> <p>From the aforementioned findings, it is clear that OP Purchaser has not provided any evidence to suggest that he is an adjacent raiyat or a Co-sharer.</p> <p>Whereas it has been established that the Pre-emptor is an adjacent raiyat by virtue of his owning several plots adjacent to the four disputed plots.</p> <p>It is an admitted fact that the land use is purely agricultural, as is conceded by both the parties. This therefore, concludes that the dispute is fully covered under Section 16(3) of Bihar Land Ceiling Act, 1961.</p> <p>In my opinion, the Learned Additional Collector had erred in holding that the OP Purchaser is a Co-sharer and therefore, the Pre-emption should fail. In the absence of any formal rights in the property under the Muslim Law, it is difficult to arrive at a conclusion.</p>	



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	<p>We have to bear in mind that all the three parties to the dispute are Muslims. Deciding the right of Co-sharing in the absence of any written documents, would mean that we would be venturing into the Muslim Personal Law, which domain lies exclusively with the competent Civil Court and not the Revenue Courts.</p> <p>That be the case, I find it difficult to support the order passed by the Learned Additional Collector on 26.07.2004. I, accordingly, set aside the same and confirm the order passed by the Learned DCLR, Araria dated 08.09.1995.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p>Dictated &amp; Corrected</p>  <p><b>K.K.Pathak</b> Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p><b>(K.K.Pathak)</b> Additional Member Board of Revenue, Bihar.</p> </div> </div>	