

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में दिक्पणी तारीख सहित 3
	<p>Revisionist as well as the Learned Advocate of the OP No. 1 was heard in great detail and thereafter this order is being passed.</p> <p>As per the Learned Advocate of the Revisionist Jiut Rai, who is also the Pre-emptor, the Revisionist and the OP No. 2 are cousins. OP No. 2 sold the land to OP No. 1 who is a rank outsider person. The OP No. 2 did this because the Revisionist and OP No. 2 were having some family dispute. The area of the disputed land is 6 dhur and 15 dhurki. The Learned Advocate further mentioned that when the sale deed was executed in the year 2003, the nature of the land was agricultural. But due to the rising population, gradually today the land is being used for residential purposes. Therefore, the Learned Advocate admits this fact that presently the land is being used for residential purposes.</p> <p>Though he was quick to add that when the pre-emption Application was filed on 17.05.2003, at that point of time, this land was agricultural. He further mentioned that his Pre-emption Application was rejected by the Learned DCLR. He then went in appeal before the Learned Additional Collector who too rejected his appeal and now he has preferred this Revision Application. He further points out that the site inspection was conducted by the Learned Advocate Commissioner, who however gave a report in favour of OP.</p> <p>The Learned Advocate further says that he is Co-Sharer and an adjacent raiyat and whereas the OP No. 1 is a stranger who is neither a Co-Sharer nor adjacent raiyat. Moreover the claim of the OP No. 1 that he is a landless</p>	

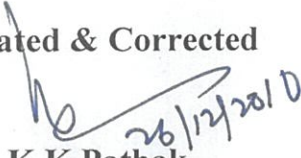
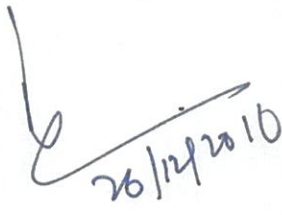
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	<p>person is also untenable given the fact that the husband of OP No. 1 is a railway employee and holds various ancestral properties.</p> <p>I also heard the Learned Advocate of the OP No. 1 Smt. Samundari Devi. He claims that the onus to prove that the Petitioner is an adjoining raiyat lies with the Petitioner himself. Moreover he wishes to point out that the nature of the sale deed is residential and it is mentioned in the sale deed itself. The Learned Advocate was frank to admit that OP No.1 is neither an adjoining raiyat nor a Co-Sharer.</p> <p>The Learned Advocate of the OP No.1 mentioned that the Learned Advocate Commissioner has conducted an on the spot enquiry of the matter and he found that the area is generally residential and one small shop and a residential house of OP No.1 is situated on the disputed plot. OP No.1 mentioned that he purchased the plot on 23.06.2003 and the Learned Advocate Commissioner made the site inspection on 15.12.2004 after a gap of 18 months by which time the OP had constructed their house.</p> <p>I have perused the documents available on record as well as the written notes of argument submitted by the Revisionist. I have also perused the Judgements submitted by the Learned Advocate of the Petitioner.</p> <p>It appears beyond doubt that the land is presently used for residential purpose as admitted by the Revisionist himself. Now the question before the Court is to determine whether the land was used for agriculture purpose 13 years ago when the Pre-emption application was filed.</p>	

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	<p>It is also noted that the area of land is so small as to make it impossible for any agricultural activity. The DCLR had rightly the rejected Pre-emption Application on these grounds. The Learned DCLR also noted that there are many houses in the vicinity of the disputed plot.</p> <p>I also note that when the Pre-emptor went in appeal before the Learned Additional Collector, the Learned Additional Collector appointed a Pleader Commissioner, who submitted the report claiming that the disputed plot and surrounding area has various houses. The report of the Learned Pleader Commissioner dated 15.12.2004 clearly mentioned that the enquiry was conducted in the presence of both the parties and the disputed land has various houses located in and around the vicinity. Some houses were Khapara Posh and some were brick houses. Therefore, in the year 2004 itself, the land was firmly under residential use.</p> <p>The Judgements of the Hon'ble High Court filed by the Revisionist do not apply in this case. None of the judgements hold the fact that Section 16(3) of Bihar Land Ceiling Act, 1961 apply to the residential plots. In fact, the Hon'ble Court has only dealt with the aspect of adjoining raiyat or a co-sharer. Therefore the Judgements mentioned by the Learned Advocate of the Revisionist would not be helpful in this matter.</p> <p>I would not venture into the fact whether the Pre-emptor is a Co-sharer or an adjacent raiyat to the disputed plot because it is an admitted fact by the OP that the OP neither is an adjacent raiyat nor a co-sharer. I would rather confine my observation to the fact that none of these</p>	

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	<p>two parties are raiyats as defined under Section 2 (k) of Bihar Land Ceiling Act, 1961. The facility of pre-emption under Section 16(3) of Bihar Land Ceiling Act is only available to raiyat and not to public at large. Since the parties involved are non raiyats, in so far as the use of disputed land is concerned, section 16(3) does not apply here. These parties may be raiyats in some other plots in some other area but as far as disputed plot is concerned, the fight between them is for residential purpose only.</p> <p>The report of the Learned Pleader Commissioner and the area involved in the disputed plot confirms that the plot was to be used for residential purpose only, even at the time of filing the pre-emption application. The land and its vicinity were firmly in use for residential purposes even at the time of filing the pre-emption application in 2003.</p> <p>That now, in 2016, the land is firmly under residential use is an admitted fact by the Revisionist himself. That be the case I do not find any reason to interfere in the order passed by the Learned Additional Collector or the Learned DCLR.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="416 1686 791 1928"> <p>Dictated & Corrected</p>  <p>26/12/2010</p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="831 1545 1246 1883">  <p>26/12/2010</p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	