

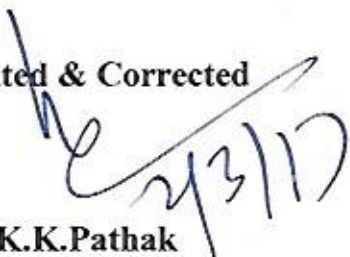
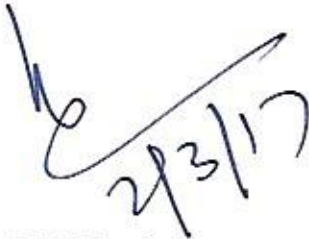
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3												
02.03.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. -256/2004 Dist. - Saran</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 45%;">Smt. Phulmati Devi & Others</td> <td style="width: 10%; text-align: center;">Versus</td> <td style="width: 45%; text-align: right;">- Petitioner/ Appellant</td> </tr> <tr> <td>Rajendra Rai & Others</td> <td></td> <td style="text-align: right;">- Opposite party</td> </tr> </table> <p>=====</p> <p><u>Appearance:</u></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 45%;">For the Appellant/Revisionist</td> <td style="width: 10%;"></td> <td style="width: 45%; text-align: right;">:Shri Raghvendra Kumar</td> </tr> <tr> <td>For the OP</td> <td></td> <td style="text-align: right;">:Shri Abhimanyu Sharma</td> </tr> </table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision matter was filed on 13.10.2004 against the order passed by the Learned Additional Collector on 09.08.2004 in Case No. 18/2003. The case was admitted for hearing on 22.03.2005. Since then, the case remained part heard for many dates. The Lower Court Records took time to reach.</p> <p>In the meantime, on 11.12.2008 the case was dismissed for default. Subsequently, a Restoration Petition was filed which too was dismissed for default on 31.05.2011.</p> <p>Later on, a Restoration Petition was filed on 23.01.2012. However, that too was dismissed by the then Additional Member on 06.09.2012.</p>	Smt. Phulmati Devi & Others	Versus	- Petitioner/ Appellant	Rajendra Rai & Others		- Opposite party	For the Appellant/Revisionist		:Shri Raghvendra Kumar	For the OP		:Shri Abhimanyu Sharma	
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	<p>This led the Petitioner to file a third Restoration Petition on 27.09.2012.</p> <p>This too was, on 24.09.14, was rejected mentioning that the order dated 06.09.2012 was a speaking order.</p> <p>Later on, another Restoration Petition was filed on 17.02.2016 and which was admitted for hearing.</p> <p>Case was heard on point of Restoration and the matter was restored on 23.01.2017 and the matter was listed for hearing on merits on 13.02.2017. On that date, the Pre-emptor himself was present but his Learned Advocate was absent. At his request, the matter was adjourned for 21.02.2017 for final hearing.</p> <p>On that date, the Learned Advocate of the Petitioner was present and heard in great detail. I also heard the Learned Advocate of the Pre-emptor who objected to the Restoration made earlier. The Learned Advocate of the Pre-emptor wanted another adjournment for arguments on merits, which was denied as this case is pending since last 13 years. However, liberty was given to the Pre-emptor to file a written note of arguments if he so desires. However, the Pre-emptor has not filed any written note of arguments.</p> <p>Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he is a Purchaser of the land. The land is in two pieces of</p>	

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	<p>Plot No. 1017(17 dhurs) and Plot No. 1018 (10 dhurs). The sale deed was executed respectively on 04.09.2002 and 05.09.2002. He claims the neither the vendor or the vendee or Pre-emptor is a Muslim, therefore, as per Hindu Law, Pre-emption as defined under Section 16 (3), is not applicable.</p> <p>He further claims that he is the adjoining raiyat for both the plots whereas the Pre-emptor is an adjoining raiyat only in one plot. Moreover, the vendor is related to the Petitioner, though, he admits that he is not a Co-sharer.</p> <p>Against the above sale, the Pre-emptor filed a Pre-emption application before the Learned DCLR, who vide order dated 16.04.2003, dismissed the application. Aggrieved, the Pre-emptor filed an appeal before the Learned Additional Collector, who vide order dated 09.08.2004, allowed the appeal. Thus further aggrieved, the vendee came for Revision before this forum.</p> <p>Concluding his arguments, the Learned Advocate of the Petitioner mentioned that land is in his possession and he has a pucca house on the plot. No agricultural is happening on the plot and therefore, Pre-emption is not applicable on residential plots.</p> <p>I also heard the Learned Advocate of the Pre-emptor who objected to the Restoration of the case, which has been dismissed for default previously and even the restoration was also rejected by the then Additional Member, Board of Revenue.</p>	

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	<p>Having heard both the Learned lawyers and having perused the material available on record as well as Lower Court Records, my own findings on the matter are as under:-</p> <p>(a) This matter has been going on for the last 13 years largely because of lack of interest on the part of the Petitioner. The case was dismissed for default previously by then Additional Member, Board of Revenue. Even the Restoration Petition was also dismissed. However, this Court felt that the matter, having being dragged on for so long, must be dealt on merits rather than be dismissed on technicalities. Thus, the case was restored and this matter was heard on merits.</p> <p>(b) It is an admitted position that nobody is Co-sharer between the three stake holders namely the vendor, the vendee and the Pre-emptor. Hence, only issue to be decided is the adjacency.</p> <p>(c) There is no evidence to suggest the vendee Petitioner is an adjacent raiyat. As per the order of the Learned DCLR, which says that the vendee claims to be an adjacent raiyat by virtue of another sale deed executed around the same time. This, in my opinion, would not qualify him to be an adjacent raiyat.</p> <p>(d) I also note that the land in dispute is having a very small area of 27 dhurs involving both the plots.</p>	

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	<p>This means that the total land involved is around 4 decimals which is too less in area to carry out any meaningful agricultural activity.</p> <p>(e) Moreover, as per the sale deed, the land use is clearly residential. The Revisionist has a pucca house on the plot which fact has not been denied by the Pre-emptor.</p> <p>(f) Unfortunately, this aspect has been overlooked by both the Learned Lower Courts. The Learned Additional Collector, however, has dwelt into this aspect that the Revisionist is not a landless person. He ignored the important aspect whether the land use is residential or agricultural.</p> <p>(g) Therefore, the issue at hand for the Learned Lower Court was to decide whether the Pre-emption law would be applicable or not. The issue of adjacency would come only when it is found that the land use is purely agricultural.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the land involved in the dispute is about 4 decimals and therefore it can be safely held that no meaningful agricultural would be possible in such a small area unless it is amalgamated with an adjoining plot where agriculture is already taking place.</p>	

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	<p>Evidence suggests that there are houses in the vicinity. Perhaps, the Revisionist himself has a house on Plot No. 1023. In the instant dispute also, the objective of the purchase is for the construction of house which has been mentioned in the sale deed itself.</p> <p>Thus, in my opinion, Pre-emption law as defined under Section 16(3) of Bihar Land Ceiling Act, should not be invoked in small plots of land intended for residential use. The State should be very conservative in invoking the Pre-emption law and needlessly intervening in a private transaction involving two individuals.</p> <p>That be the case, I find that in the instant dispute, the Pre-emption law should not have been invoked and the State has needlessly provoked litigation under the garb of Section 16(3).</p> <p>In light of the above, I find difficult to support the order passed by the Learned Additional Collector on 09.08.2004 and same is hereby set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div>	