

आदेश की क्रम सं०
और तारीख

आदेश और पदाधिकारी का हस्ताक्षर

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आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित

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BOARD OF REVENUE, BIHAR, PATNA.Revision (Land Ceiling Pre-emption) Case No. - 271/2003
Dist.- GopalganjPRESENT :- K.K. Pathak, I.A.S.,
Additional Member

Shri Kishun Singh

Versus

- Petitioner/ Appellant

Raksha Bhagat & Others

- Opposite party

Appearance:

For the Appellant/Revisionist

: Shri Dhananjay Kumar

For the OP

: Shri Ram Kishore Singh

ORDER

This is a Pre-emption matter in which a Revision Application was filed on 11.12.2003 against the order of the Learned Collector, Gopalganj dated 06.10.2003 in Ceiling Appeal No. 10/2002. The case was admitted on 08.07.2004 for hearing. The then Hon'ble Member, Board of Revenue, after hearing both the parties, passed a speaking order on 04.04.2005 and rejected the Revision Application. Therefore in so far as the Board of Revenue was concerned the Revision Case No. 271/2003 was finally disposed off.

However, against this order of the Hon'ble Member, Board of Revenue, the aggrieved Revisionist approached the Hon'ble High Court in CWJC No. 9065/2005. The Hon'ble High Court vide order dated 27.06.2008 quashed the order of the Hon'ble Member, Board of Revenue and upheld the order of the Collector Gopalganj dated 06.10.2003 and SDO, Hathua dated 13.03.2002. The Hon'ble High Court also held that

27.12.2016

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the OPs (Sri Raksha Bhagat) are not entitled to invoke the provision of Section 16 (3) of Bihar Land Ceiling Act, 1961.

Aggrieved by this single bench order, Sri Raksha Bhagat (who is the Pre-emptor in the case) filed an LPA No 612/2008. In the said LPA, the Hon'ble High Court vide its order dated 28.07.2011 remitted the matter back to the Board of Revenue for fresh consideration in accordance with law. The Court also desired that it should be ascertained by the Board of Revenue whether the application filed by the Pre-emptor is as per the requirement of the Bihar Land Ceiling Act, 1961 and also whether the Pre-emptor is an adjoining raiyat or not. The Hon'ble High Court desired that such order should be passed by the Board of Revenue within 6 months.

However, it has been more than 5 years and the matter has not been finalised. Numerous dates were given in the matter. Parties were absent on many dates and hence hearing could not take place. In the mean time, the Lower Court Records had come which are now placed with this record.

Finally, the case was heard on 21.12.2016 in which Learned Advocate of the Revisionist Sri Kishan Singh (who is the purchaser of the land) was heard in detail. The Learned Advocate of the Pre-emptor OP No. 1 Sri Raksha Bhagat was also heard on 21.12.2016. The Learned Advocate of the Revisionist pleaded that he wants to inspect the Lower Court Records of the SDO's Court, which has not come. Only the records of the Collector's Court have come. Therefore he wants more time and desires that the LCR of the SDO Court be called for. He wants to see whether the Pre-emption form was properly filled up by the Pre-emptor or not when the Pre-emption Application was initially filed before the Court of the Learned SDO.


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	<p>On this issue, this court specifically asked the Learned Advocate as to whether he was a party to the proceeding before the Court of the Learned SDO. To this he replied in affirmative. This Court then pointed out that the Learned Advocate should have been aware of the fact that whether the Pre-emption form was filled properly or not by the Pre-emptor. If the form itself was not filled properly by the Pre-emptor then the Revisionist should have filed his objection before the SDO court. This Court therefore holds that there is no point in raising this issue at the Revision level.</p> <p>This Court is further of the view that no specific purpose will be served in calling for the LCR from the Leaned SDO Court. Moreover, as per the order of the Hon'ble High Court, the matter should have been decided in the year 2011 itself and the matter has been delayed inordinately. Thus no more time can be given. The issue on which the Hon'ble High Court wants this Court to address can be suitably addressed by perusing the record of the Learned Collector's Court.</p> <p>The Learned Advocate of the OP Sri Raksha Bhagat (who is also the Pre-emptor) was also heard on 21.12.2016. He wishes to file written notes of argument. He was adviced to do so by 26.12.2016. The case was put up for final order on 27.12.2016 and hence this order is being passed today.</p> <p>In the mean time, both the Revisionist and the Pre-emptor have filed written notes of argument and the same are placed on record.</p> <p>The Learned Advocate of the OP No 1 Sri Raksha Bhagat mentioned that on 12.02.2001 OP No 2 (Ramanand Singh alias Bangali Singh) sold the land to Sri Kishan Singh who is the Revisionist. OP No. 1 filed a Pre-emption Application before the Learned SDO, Hathua who passed an order on 13.03.2002</p>	

allowing the Pre-emption Application. Aggrieved at this order, the Revisionist went in appeal before the Learned Collector, Gopalganj, who vide order dated 06.10.2003 rejected the appeal and upheld the order of Learned SDO, Hathua. Subsequently, the Revisionist filed an appeal before the Board of Revenue, thereupon the Board of Revenue also did not intervene in the order of the Learned Collector or the Learned SDO vide its order dated 04.04.2005

This prompted the Revisionist to file a case in the High Court where on 27.06.2008, he won the case and Pre-emptor lost the case. This made the Pre-emptor file an LPA wherein the Hon'ble High Court remitted the matter back to the Board of Revenue and hence this proceeding.

Having heard both the lawyers and having perused the Lower Court Records as well as written notes of argument submitted by both the parties, my own findings are as under :-

- (a) It appears that the pre-emptor (Raksha Bhagat) and vendor (Ramanand Singh alias Bangali Singh) are full brothers but the Pre-emptor chose to sell the disputed land whose area is 1 katha 2 dhurs, to the Revisionist.
- (b) It is also clear that the Revisionist is not related to the vendor or the Pre-emptor.
- (c) Whether or not the LC form was filled properly or not by the Pre-emptor would not radically alter the outcome of the dispute as these issues were best sorted out at the original court. I find no specific reason behind the Learned Advocate of the Revisionist holding the view that LC form was filled properly or not.

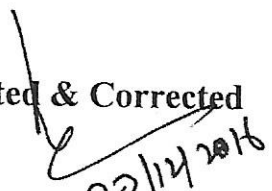

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	<p>(d) The original plot has been bifurcated and has been sold and resold in various parts to various parties. The original plot being more than 1 bigha was subsequently sold in bits and pieces to various parties. Thus the present area under dispute is so small to render any agriculture activity impossible.</p> <p>(e) I also find that there has been a partition between the two brothers namely, the vendor Sri Bangali Singh and the Pre-emptor namely Sri Raksha Bhagat. A partition once been formalised, then there is no scope for a co-sharer. The word 'Co-sharer' essentially arises in a situation where there is no formal partition. Therefore in this dispute, there is no Co-sharer. Only issue to be adjudicated is who is adjoining raiyat to the disputed plot.</p> <p>(f) On this point, the Hon'ble High Court vide its order dated 28.07.2011 has also desired the Board of Revenue to adjudicate as to who is the adjoining raiyat. To this issue I find that, for the disputed land, both the Parties are the adjoining raiyats.</p> <p>(g) However from a careful perusal of the matter, I find that none of the parties are 'raiya' in the sense that the disputed land is being surrounded by residential properties and intended use of this disputed land is also purely residential. Therefore an important aspect that is to be decided is whether Pre-emption law at all is applicable to the disputed land or not. The land</p>	

is adjoining a road and disputed plot is surrounded by both the Parties. Apparently, no agriculture activity is taking place on the land nor is it possible to undertake an agriculture activity in a plot which is so fragmented between various persons. I also note that the Pre-emptor had won an earlier Proceeding relating to land in the same plot measuring 14 dhurs wherein the same Pre-emptor's brother Bangali Singh sold 14 dhurs of land to Sri Shiv Nath Singh and same was reconveyed by Sri Shiv Nath Singh to the present Pre-emptor through a sale deed dated 25.09.2001.

(h) I am mentioning this just to illustrate the point that the original plot measuring 1 bigha has been fragmented into various plots and some are as small as 14 dhurs. I also find that Ramanand Singh has executed another 14 dhurs to Sri Kishan Singh which area is just behind the disputed plot and hence perhaps it was essential for Sri Kisan Singh (who is the Revisionist) to take this land in dispute, measuring 1 katha 2 dhurs, so that he can gain access to the road.

(i) This clearly illustrates that there is no agriculture happening on this disputed plot nor is it possible. As such none of these two parties are 'rai-yats' within the meaning of section 16 (3) of the Bihar Land Ceiling Act. The spirit of Section 16 (3) is to prevent fragmentation of agricultural land. Obviously, Section 16(3) cannot be applied to residential plots or to a land

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	<p>which is intended to be used for residential purposes as this would be devoid of all logic.</p> <p>Based on the above findings, I hold that this land is essentially residential. The vicinity of the disputed land is also residential. The entry in the sale deed to be 'Sinchit/Awasiya' also means that the land was earlier agricultural but now has shifted to residential use. None of the disputed parties are 'raiya's' within the meaning of section 2(k) of Bihar Land Ceiling Act, 1961 and hence the Pre-emption law is simply not applicable in this dispute.</p> <p>Hence I find that the Learned Collector and Learned SDM, Hathua have erred in ignoring the vital aspect that the Pre-emption law is not applicable here. The Lower Courts buried themselves in determining as to who is the adjacent raiyat without going into the fact that the property in dispute is purely residential.</p> <p>Therefore, I find that the Learned SDO and Learned Collector, Gopalganj have needlessly invoked Pre-emption laws where it is not applicable. They should not have interfered in a transaction relating to a land which is purely residential in nature. Therefore, I set aside the order passed by the Learned Collector on 06.10.2003 as also the order passed by Learned SDO, Hathua on 13.03.2002.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="363 1646 766 1971"> <p>Dictated & Corrected  K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="813 1590 1244 1971"> <p> (K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	