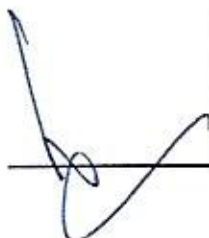


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. – 296-300/2004 Dist .- Vaishali</p> <p><b>PRESENT :- K.K. Pathak, I.A.S., Additional Member</b></p> <p>=====</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">Krishna Kumar Mishra</td> <td style="width: 20%; text-align: center;">Versus</td> <td style="width: 40%; text-align: right;">- Petitioner/ Appellant</td> </tr> <tr> <td>Kusheshwar Mishra &amp; Others</td> <td></td> <td style="text-align: right;">- Opposite party</td> </tr> </table> <p>=====</p> <p><b><u>Appearance:</u></b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">For the Appellant/Revisionist</td> <td style="width: 50%; text-align: right;">:Shri Arvind Kumar Sinha</td> </tr> <tr> <td>For the OP</td> <td style="text-align: right;">:Shri Anil Kumar Sinha</td> </tr> </table> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>15.02.2017</p> <p>This is a Pre-emption matter in which a Revision application was filed on 29.11.2004 against the order passed by the Learned Collector on 29.10.2004 in Ceiling Appeal No. 129/1997-98.</p> <p>There are two analogous cases in which Revision has been filed namely, Revision Case No. 296/2004 and Revision Case No. 300/2004. In both the matters, the Pre-emptor OP is the same. In one case the vendee is Sri Ram Balak Thakur and the other case the vendee is Sri Krishna Kumar Mishra. One case involves a purchase of land measuring 15 decimals and other case involves purchase of land measuring 10 decimals.</p>	Krishna Kumar Mishra	Versus	- Petitioner/ Appellant	Kusheshwar Mishra & Others		- Opposite party	For the Appellant/Revisionist	:Shri Arvind Kumar Sinha	For the OP	:Shri Anil Kumar Sinha	
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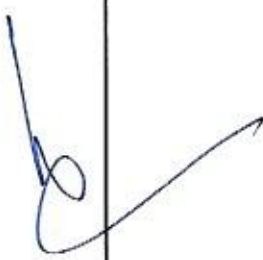
आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>The case was admitted for hearing on 08.02.2005. Meanwhile, the Lower Court Records took time to reach. There are two proceedings, namely 296/2004 and 300/2004 and since the issue at hand is similar and a common order has been passed by the Lower Courts, these two proceedings are being amalgamated here.</p> <p>On 20.09.2007, the case was dismissed for default. Subsequently, a Restoration Petition was filed and the case was restored on 31.01.2008. Since then, the case remained part heard on many dates.</p> <p>The OP No. 1 has been continuously absent in the said proceeding. The OP no. 1 is the Pre-emptor. A newspaper publication was made for the OP to appear. On 13.03.2015, a notice to this affect was published in local newspaper. However, in spite of a newspaper publication of the notice, the OP Pre-emptor did not bother to appear in this proceeding.</p> <p>The case came up for final hearing on 09.02.2017. OP No. 1, who is the Pre-emptor, was again absent despite numerous notices including newspaper publication. Since the proceeding has been going on for the last 12 years, this court held that no more adjournments need be given.</p> <p>The Learned Advocate of the Petitioner, who is the purchaser, was present and heard in great detail. The Learned Advocate of the vendors (OP No. 2 to 8) was also present and heard.</p> <p>Thus concluding the hearing, this order is being passed today.</p>	

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	<p>As per the Learned Advocate of the Petitioner, who is the purchaser, he purchased the land measuring 10 decimals and another land measuring 15 decimals through sale deed dated 26.12.1983 from Ram Balak Thakur and Subedhar Thakur. Subedar Thakur died during the pendency of appeal before the Learned Collector and Sri Ram Balak Thakur died during the pendency of this Revision application. Both have been substituted.</p> <p>The Learned Advocate further avers that OP No. 1, who is the Pre-emptor, filed a Pre-emption application before the Learned SDO who allowed the Pre-emption vide order dated 11.12.1997. Aggrieved, the Petitioner went in appeal before the Learned Collector who dismissed the appeal vide order dated 29.10.2004. Thus further aggrieved, the Petitioner filed this Revision Application before the Board of Revenue.</p> <p>Continuing with his arguments, the Learned Advocate mentioned that no party is related to any other party. The Pre-emptor is neither the adjacent raiyat nor the Co-sharer. Moreover, as per him, the land use is purely residential and which fact was mentioned in the sale deed also that this land is being purchased for the purpose of building a house. But this fact was ignored by both the Learned Lower Courts.</p> <p>Concluding his arguments, the Learned Advocate of the Petitioner argues that the Pre-emption application was filed much after the period of Limitation and the LC- 13 form was not filled in proper format. Finally, he says that the land use is residential, all the adjoining plots</p>	



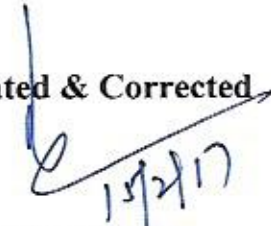



आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 4 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>are residential and there are many houses in the vicinity. The land is in his possession since 1983.</p> <p>I also heard the Learned Advocate of the OP No. 2 to 8 who are the vendors. He supported the case of the Petitioner and said that he has nothing more add.</p> <p>Having heard the Learned Advocate of the Petitioner and OP no 2 to 8 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) It is evident that the Pre-emptor OP has been continuously absenting himself from the proceeding of this Court. Even a notice in the newspaper Prabhat Khabar was published on 13.03.2015 asking the Pre-emptor to appear before the Board of Revenue. But he chose to remain absent continuously and hence forcing this Court to pass an order in his absence.</p> <p>(b) Coming to the merit of the case, I find that the area of land involved in the two sale deeds are too small to have any meaningful agriculture. One plot is 10 decimals and other plot is 15 decimals.</p> <p>(c) I also find that the land is in the possession of the Petitioner vendee.</p> <p>(d) I also perused the order of the Learned SDO dated 11.12.1997 vide which the Learned SDO had allowed the Pre-emption. It appears from the police report of Police</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर <sup>5</sup> 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>Station Pathapur that the Petitioner has a house in the village and this land is inside the village. Though there was an attempt by the Petitioner to put up a hut on the disputed plot, the Learned SDO held that this was an attempt by the Petitioner to change the nature of the land. To my mind, it is an erroneous conclusion by the Learned SDO. The attempt to put on a hut only means that the Petitioner was trying to take the possession of the land which was delivered to him by the nazir on 12.04.1984. Therefore, the said attempt by the Petitioner should be more seen as an attempt to take possession of the land rather than to change the nature of the land.</p> <p>(e) The Learned SDO also ignored the fact that the area is largely residential and there are various houses in the vicinity of the disputed land.</p> <p>(f) The Learned SDO instead buried himself in deciding whether the Pre-emptor is an adjacent raiyat or not. Having held that the Pre-emptor is an adjacent raiyat, he allowed the Pre-emption, ignoring in the process the requirement as to whether the Pre-emption law is applicable in such small pieces of land which are primarily for the residential use and in the middle of a village.</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 6 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p><b>Conclusion:-</b></p> <p>From the aforementioned findings, it is clear that both the Learned Lower Courts have ignored the vital aspect about the land use and the location of the plot as well as the size of plot which makes it impossible for any person to carry on any meaningful agriculture.</p> <p>The land use is purely residential and moreover, the vicinity is also having a lot of houses around the disputed plot. In such a situation, it is not advisable to invoke the Pre-emption law.</p> <p>The primary purpose of the Pre-emption law, as defined under Section 16 (3), is to prevent fragmentation of agriculture holding so that a raiyat may look after all his holdings at once place and carry on meaningful agriculture using modern techniques and with better supervision.</p> <p>It is not very difficult to prove or disprove whether any piece of land is agriculture or residential. Agriculture can happen even on 1 decimal of land. On the contrary, a person may put one small hut over an acre of land and claim that entire land as residential. Both these situations have come across before this Court on many occasions previously with a view to bring or defeat the Pre-emption law on the disputed land.</p> <p>The Pre-emption law, traditionally speaking, should not be evoked on small plots of land regardless of their use. We must not forget that even raiyats need to build</p>	



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>a house and therefore they need some small area to build their house on.</p> <p>If the State, under the garb of Pre-emption law, keeps interfering on such small transactions then we would be needlessly promoting litigation while losing the larger objective of consolidation of land holding and/or prevention of fragmentation of agriculture land.</p> <p>That be the case, I find that the instant dispute is not falling under the four corners of Pre-emption law. It is proved beyond doubt that there is a house on the disputed land and there are houses in the vicinity of the disputed land. In such a case, invoking Pre-emption law is not advisable.</p> <p>Therefore, I find it difficult to support the order of the Learned Collector dated 29.10.2004 as well as the Learned SDO dated 11.12.1997 and the same are hereby set aside.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">   <b>Dictated &amp; Corrected</b>  <b>K.K.Pathak</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> <div style="text-align: center;">   <b>(K.K.Pathak)</b>  <b>Additional Member</b>  <b>Board of Revenue, Bihar.</b> </div> </div>	