आदेश की क्रम सं0 और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.- 32/2006
Dist.- Madhubani

PRESENT :- K.K. Pathak, I.A.S.,
Additional Member

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Umesh Mahtha - Petitioner/ Appellant

Versus

Ram Gulam Mandal & Others - Opposite party

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Appearance:

For the Appellant/Revisionist : Shri Umesh Mehta
For the OP : Shri Manager Sah

ORDER

27.12.2016

This is a Revision Application filed on 13.02.2006 under Section 32 of Bihar Land Ceiling Act, 1961 against the order dated 05.05.2005 passed by the Learned Additional Collector, Madhubani in Ceiling Appeal No. 55/2003-04. The case was admitted on 18.05.2006 and the delay was condoned.

Since then, the case remained part heard on many dates. Both the advocates have sought time frequently on various dates thus final order could not be passed. Finally, the case was heard on 20.12.2016. The Learned Advocate of the Revisionist was present on the date. The Learned Advocate of the OP No 5 (vendee) was also present. Learned Advocate of OP No 6 was absent. The Learned

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	Advocate of the Petitioner had already filed a written note of argument. The Learned Advocate of OP No. 5 wanted to file his written notes of argument. He was given time to file a written note of argument by 26.12.2016 and the case was put up for order on 27.12.2016. The Learned Advocate of OP No. 5 had filed his written notes of arguments subsequently. After hearing both the parties and perusing their written note of arguments, this order is being passed today. As per the Learned Advocate of Petitioner, who is also the Pre-emptor, he had filed a Pre-emption Application before the Learned DCLR who by order dated 09.09.2003 allowed his Pre-emption Application. Aggrieved by the order of the Learned DCLR, the OPs went in an appeal before the Learned Additional Collector who vide order dated 05.05.2005 overturned the order of the Learned DCLR. Hence, this Revision Application was preferred. As per the Learned Advocate of the Petitioner, on 20.11.2003, two sale deeds were executed each measuring 6½ kathas. The vendor is OP No 6 who sold the land to OP No 5 who is the vendee. The Petitioner is related to the vendor OP No 6 but the OP No 6 chose not to sell this land to the Petitioner who is the relative, but to OP No. 5 who is an outsider. The Learned Advocate further mentioned that the father of OP No 6 was a Co-Sharer of the Petitioner's father. Hence he is a Co-Sharer of OP No. 6. He also claims that he is an adjacent raiyat of the disputed plot from the east and the west. As per the Learned Advocate of the Petitioner, Plot No. 3402 is the adjacent plot to the disputed land and	

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	not 3403. Plot No. 3403 has been fraudulently shown by the OPs as an adjacent plot to the disputed land. The Learned Advocate of the OP No. 5 was also heard in great detail. He claims that he is an adjacent raiyat from the southern side which is also mentioned in the sale deed. He claims that the map referred by the Petitioner is not correct. In the recent survey, three plots namely 3267, 3402 and 3403 have been amalgamated into a new plot namely 3452 whereas the Revisionist are relying on a map of an older survey. The Learned Advocate of OP No 5 further mentioned that if the Revisionist claims to be a Co-Sharer, he should have a produced a genealogical table which he has not done. Moreover, there are two sale deeds involved but only one Pre-emption Application was filed. The Pre-emption Application was also filed with a delay which is unexplained. Having heard the Learned Advocates of both the sides and having perused the material available on the record as well as the written notes of arguments, my own findings on the matter are as under :- (a) I find no merit in the contention of the OP No. 5 that two Pre-emption Applications should have been filed since two sale deeds were involved. I tend to support the observation of the Learned DCLR that the money was deposited through two separate challans towards the Pre-emption application, hence there is no harm in filing a common Pre-emption Application.	

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	(b) From the perusal of the record, it is also clear that both parties are adjacent raiyats to the disputed plot. As per the traditional view on the Pre-emption laws, if the vendee is a Co-Sharer or an adjacent raiyat, the Pre-emption fails. In the instant case, the vendee OP No 5 is an adjacent raiyat. The Pre-emptor too is an adjacent raiyat as has been established in the findings of the Learned DCLR. (c) Now comes a question that when both the parties are adjacent raiyats to a disputed plot then who should be preferred. Common logic says that a party who is both a Co-Sharer and an adjacent raiyat should be preferred over the party who is just an adjacent raiyat. However, Pre-emption is a weak right and the right to sell property should not normally be interfered with unless it attracts the provisions of Section 16(3) of the Bihar Land Ceiling Act, 1961. I have perused the written notes of argument of the Revisionist who claims to be a Co-sharer, but he has not filed any evidence or genealogical table to prove his point. Perhaps a formal partition of the property had happened between the Revisionist and OP No. 6. However, even if it is assumed that the Revisionist is a Co-Sharer and an adjacent raiyat to the disputed plot, he still cannot claim a Pre-emption right against OP No. 5 who is, though not a Co-sharer, but an adjacent raiyat. That be the case the Learned	

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DCLR should not have interfered in the transaction.

(d) I also note with concern that the land involved is too small to be of any agricultural use. The sale deed also mentioned that the nature of the land is 'bhith'. This lends a suspicion in the mind of this court that perhaps the land is not to be used for agricultural purposes. It is an established view that Pre-emption law under Section 16(3) of Bihar Land Ceiling Act, 1961 cannot be applied on residential land or to the land being intended for residential use.

From the above findings, it is clear that both the parties are adjacent to the disputed plot. Moreover, the intended purpose for the purchase of the disputed plot does not appear to be agricultural. Thus, the Pre-emption law will not apply to the disputed plot and sale deed so affected between the vendor and vendee should not be challenged.

That be the case, I uphold the order of the Learned Additional Collector passed on 05.05.2005.

Revision Dismissed.

Dictated & Corrected

27/12/2016

K.K.Pathak
Additional Member
Board of Revenue, Bihar.

27/12/2016

(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.