

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

BOARD OF REVENUE, BIHAR, PATNA

Revision (Land Ceiling Pre-emption) Case No - 353/96
District - Samastipur

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

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Sri Kameshwar Prasad Singh & Other - Petitioner/Revisionist

Versus

Sri Ramji Pandit - Opposite Party

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Appearance

For the State

:

For the Petitioner/Appellant/Revisionist

: Prabhat Kumar

For the OPs

: Sanjay Kumar Pandey

ORDER

28.02.2018 This is a Pre-emption matter in which a Revision Application was filed by the Revisionist on 31.01.1997 against the Order dated 21.08.1996 by the Learned Collector Samastipur in Pre-emption Case No. - 10/1994-95 & 03/1995-96.

Subsequently, the case was taken up for hearing by the then Additional Member, Board of Revenue. The then Hon'ble Additional Member, vide Order dated 21.02.2005, dismissed the petition in default with the reason that the Revisionist has not taken due interest. The matter was restored on 07.06.2005. However, it was again dismissed for default on 02.01.2006. Subsequently, it was again restored

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	<p>and vide order dated 06.11.2006, the then Learned Additional Member dismissed the Revision.</p> <p>Aggrieved at this Order, the Revisionist filed a Writ in the High Court namely, CWJC No. - 14550/2008. The Hon'ble High Court, vide Order dated 05.07.2017, set aside the impugned order dated 06.11.2006 and sent the matter back to the Board of Revenue to hear the matter afresh.</p> <p>Hence this proceeding.</p> <p>Accordingly, the notices were issued to both the parties. The Learned Advocates of both the parties were heard on 20.02.2018. Thus, concluding the hearing, this Order is being passed today.</p> <p>As per the Learned Advocate of the Revisionist, who is also the Vendee, this is the third round of Revision before the Board of Revenue. The first round before the Board of Revenue went in his favour in the year 1998. The OP then had gone in writ to the Hon'ble High Court which remanded the matter back to the Board of Revenue the second time.</p> <p>In the second round, the Board of Revenue ordered in the favour of the OP in 2006. Aggrieved, the Revisionist went to the High Court and the High Court remanded the matter back in 2017 and hence this proceeding.</p> <p>The Learned Advocate further mentioned that the land under dispute is a home stead land with an area of 5 kathha and 12 dhur. The land was purchased by the ancestors of the</p>	

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	<p>Petitioner No. 1 & 2 from the ancestors of OP No. – 13 on 20.03.1957. As per the Learned Advocate, their names also appear in the RS khatiyān. However, the formal sale deed was executed only on 25.04.1998, for which no consideration was paid. Therefore, as per the Learned Advocate, since the transaction was not a sale and the land used home stead the Pre-emption will not lie. He further mentioned that the LC Form-13 was not filled properly. Moreover, he claims that, the land is in his possession and the Pre-emptors are not the co-sharers.</p> <p>Concluding his argument, the Learned Advocate of the Revisionist mentioned that the original Pre-emptor died on 12.07.1993 but the substitution petition was not filed within 30 days.</p> <p>The Learned Advocate of the Pre-emptor was also heard in great detail. He draws the attention of this Court to the relevant portion of the order passed by the Board of Revenue in the year 2006 wherein it is mentioned that both the parties were present on 28.07.2005 but thereafter the Petitioner (Revisionist) remained absent for 19 consecutive dates.</p> <p>The Learned Advocate of the OP also mentioned that the land is in his possession and he is the adjacent raiyat. He refutes the claim of the Revisionist that the Revisionist is an adjacent raiyat.</p>	

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Concluding his arguments, he mentions that the Orders passed by the original Court of Learned DCLR and Learned Collector are in his favour. The Learned Advocate also filed the rent receipts from the year 2011-2018.

Having heard both the parties and having perused the documents on record, my own findings in the matter are as under:-

- a. When the original Pre-emption Application was filed, the original court of Learned DCLR passed an Order on 11.02.1994 allowing the Pre-emption.
- b. The Learned DCLR held that although that Pre-emptors are not the co-sharers but certainly are adjacent raiyats.
- c. It also appears that the Pre-emptor is a home stead tenant.
- d. I have also perused the Order passed by the Learned Collector, Samastipur who had dismissed the appeal of Revisionist on merits and, by his order dated 21.08.1996, held that there are gross inconsistencies and the incongruities in the statement of Sri Kameshwar Prasad Singh. The Learned Collector also held that the appellant has failed to prove that

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	<p>he is an adjacent raiyat to the disputed land.</p> <p>e. Aggrieved at this Order, the Revisionist had then approached the Board of Revenue in the year 1996. The then Additional Member, vide Order 08.06.1998, allowed the revision.</p> <p>f. It may be noted that the Learned Additional Member did not go into the merits of the case. Rather, he rejected the pre-emption on the grounds that the pre-emption application was not filed within the stipulated 90 days.</p> <p>g. Further aggrieved, the Pre-emptor went to the Hon'ble High Court in CWJC No.-5832/1998 wherein the Hon'ble High Court, vide order dated 23.06.2004, quashed the order of the Learned Additional Member. The Hon'ble High Court held that findings of the Board of Revenue were not correct as the registration for the land was not done on 25.04.1998 (as is mentioned in the Order of the Board of Revenue). On that date, only execution of the document was made. The actual date of registration was</p>	

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	<p>12.07.1991 and therefore, the pre-emption application, which was filed on 21.08.1991, was well within the time limit. Therefore, the Hon'ble High Court set aside the order of the Board of Revenue and remanded the matter back.</p> <p>h. The Board of Revenue again heard the matter and the then Additional Member, vide order dated 06.11.2006, dismissed the Revision by a very speaking order considering all the points in detail. However, it was noted by the then Additional Member that the Revisionist was not appearing for 19 dates. In that light of the matter, the Hon'ble Additional Member proceeded to hear the matter Ex-parte and dismissed the Revision.</p> <p>i. Further aggrieved at this order, the Revisionist went to the High Court and the matter was again remanded by the High Court on the simple ground that since the notices were not served on the Revisionist and hence he should be heard.</p> <p>j. However, the Hon'ble High Court also noted that both the parties should appear</p>	

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	<p>before the Board of Revenue on 24.08.2017.</p> <p>k. I note with concern that the Revisionist filed the application on 24.08.2017 itself but the Appeal Section did not present the Petition immediately before the Hon'ble Member, Board of Revenue. Rather, the case was re-opened only on 24.01.2018. I direct the Secretary, Board of Revenue to look into the matter and take action against the concerned staff for this inordinate delay.</p> <p>l. Coming to the merits of the case, I find that the Revisionist had not filed any rent receipts even though a specific direction to this effect was issued to him. Therefore, it appears that the land in question is not in his possession. On the contrary, the Pre-emptor has filed rent receipts for about 08 years.</p> <p>m. However, without going into the issue of the possession, I also note that the Revisionist has not been able to prove that he is an adjacent raiyat.</p> <p>n. From the perusal of the records, it is also clear that although the Pre-emptor is not a</p>	

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	<p>co-sharer, but he is definitely an adjacent raiyat.</p> <p>O. It is also clear from the Order of the Hon'ble Additional Member dated 06.11.2006 that the Revisionist has been changing his plea from time to time, which fact has also been confirmed by the Learned Collector. Therefore, the Revisionist's claim that it is a benami purchase cannot be agreed to. Moreover, this benami purchase issue was not raised by the Revisionist before the original Court which materially weakened his case.</p> <p>P. Moreover, the Revisionist has not been able to prove to the undersign that the Pre-emptor is not an adjacent raiyat nor he has produced any paper which may suggest that the disputed land is being used for home stead purposes.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the Revisionist has not been able to prove that he is an adjacent raiyat. His explanation regarding benami transaction is also untenable. It is difficult to believe that if the land was purchased by the ancestors of the Revisionist in the year</p>	

1957, the actual sale deed was executed in the year 1988, that too without any financial consideration. Nor has he been able to convince the undersigned that the land is used for home stead purposes as he did not filed any document in support of his contention.

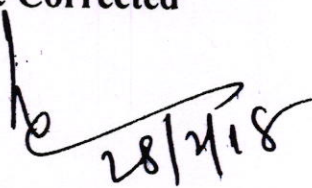
Moreover, in spite of a clear direction to file the rent receipts, he did not file any rent receipts.

I would tend to agree with the findings of the original Court of the Learned DCLR that although the Pre-emptor OP is not a co-sharer, he is definitely an adjacent raiyat whereas the Revisionist is not.

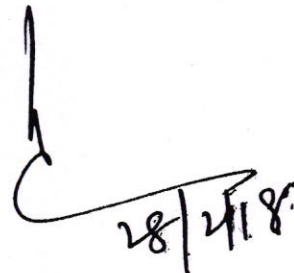
That be the case, I hold that there is no merit in the contention of the Revisionist and therefore, this Revision Application cannot be supported.

Revision Dismissed.

Dictated & Corrected



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



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

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	<p>1987, the actual sale deed was executed in the year 1988.</p> <p>that too without any financial consideration. Not has he been</p> <p>able to explain the consideration that the land is used for</p> <p>public good purpose as he did not filed any document in</p> <p>support of his contention.</p> <p>Moreover, in spite of a clear direction to file the return</p> <p>therein, he did not file any return receipt.</p> <p>I would tend to agree with the findings of the original</p> <p>Order of the Learned DCIR that although the Proprietor OP</p> <p>is not a resident, he is definitely an adjacent landowner whereas</p> <p>the Revisionist is not.</p> <p>That for the case, I hold that there is no merit in the</p> <p>contention of the Revisionist and therefore, this Revision</p> <p>Application cannot be supported.</p> <p>Revision Dismissed.</p> <p>Proposed & Corrected</p> <p>2/12/18</p> <p>(K.R. Sharma)</p> <p>Additional Member</p> <p>Board of Revenue, Bihar</p>	