
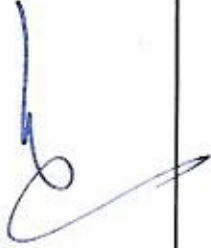



आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. - 78/1978 Dist.- Darbhanga</p> <p style="text-align: center;">PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">Dhanpat Yadav</td> <td style="width: 20%; text-align: center;">Versus</td> <td style="width: 40%; text-align: right;">- Petitioner/ Appellant</td> </tr> <tr> <td>Ram Kripal Mistry & Others</td> <td></td> <td style="text-align: right;">- Opposite party</td> </tr> </table> <p>=====</p> <p><u>Appearance:</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">For the Appellant/Revisionist</td> <td style="width: 60%; text-align: right;">:Shri Ashok Kumar Mishra</td> </tr> <tr> <td>For the OP</td> <td style="text-align: right;">:Shri Dhananjay Kumar Singh</td> </tr> </table> <p style="text-align: center;"><u>ORDER</u></p> <p>07.03.2017</p> <p>This is a Pre-emption matter which has been pending for long as the file had been misplaced in the office of the Board of Revenue for which action has been taken against the concerned bench clerk.</p> <p>From the perusal of the record, it is clear that the bench clerk who had clearly, with a mala fide intention, played a role and a result of which, the records were lost. I understand that a departmental proceeding had already been initiated against him. I accordingly recommend to the Secretary, Board of Revenue for a major penalty against the said bench clerk.</p> <p>Now coming to the case, the matter got reinitiated when the Petitioner Sri Dhanpat Yadav filed a</p>	Dhanpat Yadav	Versus	- Petitioner/ Appellant	Ram Kripal Mistry & Others		- Opposite party	For the Appellant/Revisionist	:Shri Ashok Kumar Mishra	For the OP	:Shri Dhananjay Kumar Singh	
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	<p>copy of the judgement of the Hon'ble High Court passed in CWJC No. 10185/1998 wherein, vide order dated 23.09.1999, the Hon'ble High Court was pleased to set aside the order passed by the Additional Member, Board of Revenue and directed the Petitioner to file a substitution for a legal heirs of Sukan Mistri (the original Pre-emptor), as the Board had passed the order against the dead person. The Board then shall rehear the parties and decide the case fresh on merit.</p> <p>Accordingly, the Petitioner Sri Dhanpat Yadav filed a substitution Petition on 02.05.2016 substituting the legal heirs of OP No. 1. Notices were issued to both the parties after the substitution, in place of Sri Sukan Mistri, of his three sons. They were substituted on 22.02.2017.</p> <p>The case was finally heard in detail on 22.02.2017. On that date, the Learned Advocate of the Petitioner, who is the Purchaser, was heard. The Learned Advocate of the OP, who is the Pre-emptor, was also heard. Thus concluding the hearing, this order is being passed today.</p> <p>The Learned Advocate of the Petitioner was present who wanted a short adjournment which was denied. This Court felt that the matter has been going on since 1978, therefore, no more adjournments need be given. However, liberty was given to the Petitioner to file his written note of arguments which he did on 03.03.2017.</p> <p>I also heard the Learned Advocate of the OP who is the Pre-emptor. As per him, a sale deed involving the disputed Plot No. 1793, Khata No. 52 having an area of 7</p>	

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	<p>katha 17 dhurs was executed on 02.03.1973 by the vendor in favour of the Petitioner Sri Dhanpat Yadav.</p> <p>Immediately, he filed a Pre-emption application in Case No. 11/1973-74 claiming that he is an adjacent raiyat who already held 2 katha 10 dhur in the same plot. The Learned DCLR however, vide order dated 06.09.1976, rejected his application holding that the Purchaser is also an adjacent raiyat.</p> <p>Aggrieved, the Pre-emptor went in appeal before the Learned Additional Collector in Case No. 29/1976-77 who, vide order dated 21.12.1977, allowed his appeal holding that the recent survey shows that Plot No. 1790, 1792 and 1781 are in the name of Ramawatar Yadav, Nirsa Yadav, Jarohar Yadav and Rambadan Yadav but not in the name of Dhanpat Yadav, who is the purchaser.</p> <p>Continuing his arguments further, the Learned Advocate of the Pre-emptor mentioned that the Petitioner, aggrieved by the order of the Learned Additional Collector, came before the Board of Revenue in Revision Case No. 78/1978, who allowed the Revision vide order dated 26.12.1978.</p> <p>Thus further aggrieved, the Pre-emptor went to the Hon'ble High Court in CWJC No. 2665/1979 wherein the Hon'ble High Court, vide order dated 11.05.1984, set aside the order passed by the Board of Revenue and remanded the matter back to it.</p> <p>As per the Learned Advocate of the Pre-emptor, upon remand, again, vide order dated 09.12.1996, the Board</p>	


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	<p>of Revenue again allowed the Revision in favour of the Petitioner-Purchaser.</p> <p>Aggrieved, the Pre-emptor again went to the Hon'ble High Court in CWJC No. 10185/1998 wherein the Hon'ble High Court, vide order dated 23.09.1999, again remanded the matter back to the Board of Revenue as it was found that the original Pre-emptor Sri Sukan Mistri had died during the pendency of the Revision and the Board of Revenue had passed an order without providing for legal substitution of the Pre-emptor.</p> <p>Hence, the Board of Revenue must rehear the matter after the purchaser files his substitution Petition. As per the Learned Advocate, this file was lost and hence no order could be passed by the Board of Revenue. It was reopened when the Petitioner Purchaser file a case in 2015.</p> <p>As per the Learned Advocate of the Pre-emptor, he is the adjacent raiyat of the disputed plot whereas the Pre-emptor Purchaser is not an adjacent raiyat of the disputed plot. Moreover, the property of the Petitioners were earlier joint property but the same has been partitioned and one of the relatives of the Purchaser Sri Nirsa Yadav has already given affidavit saying that the land has been partitioned. Therefore, there is no question of the Purchaser being a Co-sharer.</p> <p>Concluding his arguments, the Learned Advocate of the Pre-emptor also mentioned that during this period, by an order of the Learned DCLR, the sale deed was also registered in favour of the original Pre-emptor Sri Sukan Mistri on 12.01.1993. The vendor was given notices to</p>	

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	<p>execute the deal in his favour, but when he refused, the sale deed was executed through the process of the Court. Finally, the Pre-emptor claims that he is in the possession of land.</p> <p>Having heard the Learned Advocates of both the sides and having pursued written note of arguments submitted by the Petitioner and having gone through the various material available (which was recreated with the assistance of the parties in dispute), my own findings on the matter are as under:-</p> <p>(a) The Learned DCLR had held that the Purchaser is also an adjacent raiyat and hence disallowed the Pre-emption.</p> <p>(b) Upon appeal, the Learned Additional Collector, vide order dated 21.12.1977, allowed the Pre-emption quoting that the Purchaser is not an adjacent raiyat.</p> <p>(c) The Purchaser-Petitioner came in Revision before the Board of Revenue who, vide order dated 26.12.1978, allowed the Revision holding that the Purchaser is a Co-sharer of an adjacent plot 1790.</p> <p>(d) Aggrieved, the Pre-emptor approached the Hon'ble High Court in CWJC No. 2665/1979 wherein the Hon'ble High Court, vide order dated 11.05.1984, quashed the order of the Member, Board of Revenue and the remanded the matter back.</p> <p>(e) Again, on remand, the Board of Revenue, vide order dated 09.12.1996, held that the</p>	

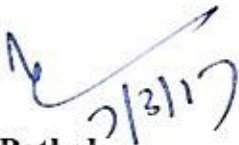
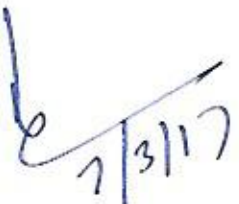
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	<p>Revisionist is a Co-sharer and hence the claim of the Pre-emptor is neutralised.</p> <p>(f) Further aggrieved, the Pre-emptor again went to the Hon'ble High Court in CWJC No. 10185/1998, on technical grounds that the order passed by the Board of Revenue on 09.12.1996 was against the Pre-emptor who had died by then and no substitution was filed. The Hon'ble High Court, vide order dated 23.09.1999, quashed the second order of the Board of Revenue and remanded the matter back.</p> <p>(g) The Petitioner should have approached the Board of Revenue immediately after 1999 to file a Revision application. However, he filed a Revision application after 16 years in 2015. In his Revision application, he has not given any reason for this delay of 16 years. Except claiming that (as per Para 4 of the Revision application) he had no knowledge of the order passed by the Hon'ble High Court. Also, he did not receive any notices from the Board of Revenue.</p> <p>(h) Ostensibly, he is trying to pin the blame for non action for 16 years on the Board of Revenue which cannot be accepted.</p> <p>(i) Nor can this averment of the Petitioner be accepted that he was not aware the order</p>	

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	<p>passed by the Hon'ble High Court on 23.09.1999.</p> <p>(j) Notwithstanding above, in the interest of justice, the Board of Revenue took up the matter for hearing and recreated the records so lost. Therefore, this silence of 16 years goes against the Petitioner.</p> <p>(k) Now coming to the merits of the case, the claim of the Petitioner is that he is a Co-sharer of the property which is adjacent to the disputed Plot No. 1793, hence he is an adjacent raiyat.</p> <p>(l) Therefore, it is an admitted position that the Petitioner is not an adjacent raiyat in his individual capacity as the adjacent plot is not owned by him but by his family and since the adjacent plot is a joint family property, therefore he is collectively the owner of the adjacent plot 1790.</p> <p>(m) At least, the above is the interpretation as made out by the Hon'ble Member, Board of Revenue vide his order dated 26.12.1978.</p> <p>(n) The word 'Co-sharer' as used in Section 16(3) of Bihar Land Ceiling Act, 1961, provides that a raiyat has to be Co-sharer. <u>The law meant that the raiyat should be the Co-sharer of the disputed plot and not the Co-sharer of an adjoining plot.</u> To</p>	

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	<p>elucidate, the relevant portion of Section 16(3) is reproduced below:-</p> <p><i>‘When any transfer of land is made after the commencement of the Act to any person other than [a co-sharer] or [a raiyat of adjoining land], and [co-sharer of the transferor] or any raiyat holding land adjoining the land transferred, shall be entitled.....’</i></p> <p>From the above, the three phrases in parenthesis (emphasis mine) are ‘a co-sharer’ and ‘a raiyat of an adjoining land’ and ‘co-sharer of the transferor’ are important. Therefore, when we talk about ‘a co-sharer’, he has to be a co-sharer of the <u>disputed plot (which belongs to the transferor or vendor) and not the co-sharer of the adjoining plot</u>. On the other hand, when we talk about a raiyat of adjoining land, he has to be owner of land sharing borders with the disputed land.</p> <p>(o) Section 16(3) does not envisage that any interested Purchaser has to be a Co-sharer of the adjoining plot. Attention is drawn to the word ‘Co-sharer of the transferor’. Transferor means the vendor. To defeat the Pre-emption, the Purchaser has to be a Co-sharer of the vendor (either of the disputed plot or of any other plot), and not a Co-sharer of an adjoining plot.</p>	

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	<p>(p) Therefore, any relief given to the prospective purchaser on account of the fact that he is a Co-sharer of the adjoining plot is not correct. I am afraid that the order passed by the Board of Revenue on 21.12.1977 and 09.12.1996 will not pass the muster of definition of 'Co-sharer' as defined under Section 16(3).</p> <p>(q) It may be noted that the Learned DCLR rejected the Pre-emption on the ground that the adjacent plots which lie towards the western boundary of the disputed plot belong to the 'family' of the Purchaser Sri Dhanpat Yadav. Hence, it was held that Sri Dhanpat Yadav, by virtue of being a Co-sharer of an adjacent plot, is also an adjacent raiyat. This, in my opinion, is stretching the adjacency too far. An adjacent raiyat has to be adjacent raiyat in very clear terms and not under a joint family arrangement. <u>If the Purchaser claims to own the adjacent plot in joint name, he should have purchase the disputed plot also in the name of the joint family including all other members, which was not the case in the instant dispute.</u></p> <p>(r) Therefore, when the Purchaser purchased the disputed land in his own name and not in the joint name of his other family members, he</p>	

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	<p>cannot claim that he is Co-sharer of adjacent plots.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the law as defined under Section 16(3) of Bihar Land Ceiling Act, 1961 the Co-sharer has to be the Co-sharer of the transferor. Sri Dhanpat Rai admittedly is not a Co-sharer of the transferor.</p> <p>He claims to be the Co-sharer of an adjacent plot and hence he claims adjacency. This is not envisaged under Section 16(3). As per Section 16(3), an adjacent raiyat has to be the raiyat owning the adjoining plot of the vended plot. This ownership has to be clear and the name of the owner must appear in the Revenue records.</p> <p>Even if I were to assume that the purchaser is still a joint family (to his advantage) and even if I were to assume that the family of Dhanpat Rai lies adjacent to the vended plot, then the Purchaser of the vended plot should be the <i>entire family</i> and not just Dhanpat Rai. Since Dhanpat Rai is the one who individually purchased the land in his own name and not in the name of joint family, he cannot claim to be an adjacent raiyat.</p> <p>Therefore, the above conclusively proves that the Petitioner-Purchaser is neither a Co-sharer and nor an adjacent raiyat within the meaning of Section 16(3) of Bihar Land Ceiling Act, 1961.</p> <p>That be the case, I find that the Learned DCLR has erred in holding that the Purchaser is also an adjacent</p>	

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	<p>raiyat. Therefore, I, accordingly, set aside the same and uphold the order passed by the Learned Additional Collector on 21.12.1977.</p> <p>Revision dismissed.</p> <p>Dictated & Corrected</p> <p> K.K.Pathak Additional Member Board of Revenue, Bihar.</p> <p> (K.K.Pathak) Additional Member Board of Revenue, Bihar.</p>	