आदेश की क्रम सं० और तारीख 1	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. – 86/2005
Dist. - Siwan

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

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Hari Shankar Prasad - Petitioner/ Appellant

Versus

Ram Swaroop Bhagat & Others - Opposite party

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Appearance:

For the Appellant/Revisionist : Shri Raghav Prasad
For the OP : Shri Shailendra Kumar Singh

ORDER

16.02.2017

This is a Pre-emption matter in which a Revision application has been filed on 25.04.2005 against the order passed by the Learned Collector, Siwan on 11.03.2005 in Appeal Case No. 485/2003. The case was admitted for hearing on 13.09.2005 and the order imposing penalty of Rs. 10,000 by the Learned Collector, Siwan was stayed.

Since then, the case remained part heard on various dates. The Lower Court Records took time to reach. In the meantime, the case was dismissed for default on 10.09.2015. Subsequently, a Restoration Petition was filed and case was restored on 05.05.2016.

The case was finally heard on 10.02.2017. The Learned Advocate of the Petitioner, who is the Pre-emptor,

आदेश की क्रम सं0 और तारीख 1	2 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	was heard. I also heard of the Learned Advocate of the OP who is the purchaser. Thus concluding the hearing, this order is being passed today. As per the Learned Advocate of the Pre-emptor-Petitioner, he has challenged the order passed by the Learned Collector on 11.03.2005. The Learned Collector, while dismissing the appeal of the Pre-emptor and upholding the order of the Learned DCLR dated 05.03.2003, also imposed a cost of Rs. 10,000 which was stayed by the Board of Revenue vide its order dated 13.09.2005. Continuing his argument, the Learned Advocate further mentioned that this land having an area of 4½ dhur of Plot No. 1028 and Khata No. 140 was purchased by the vendee. The Pre-emptor filed a Pre-emption application before the Learned DCLR but the Learned DCLR rejected the Pre-emption application on the ground that the vendee is a Co-sharer. Secondly, the land under Pre-emption is very small. This order was passed, in spite of both the Learned Courts holding that the Pre-emptor is an adjacent raiyat from west and south of the vended land and yet they ruled against him. As per the Learned Advocate, the vendee is not a Co-sharer of the vendor as they belong to different castes. Vendee is Koeri and the vendor is Dusadh. However, the Learned Lower Court held that vendee is a Co-sharer since	

आदेश की क्रम सं० और तारीख 1	3 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	he owns some land in the same plot 1028. He further pleads that the vendee is not even an adjacent raiyat. Concluding his arguments, the Learned Advocate admits that he is not in the possession of the land whereas the vendee is the possession of the land and they are using it for agriculture purposes. He also submits a Nazri Naksha of the disputed plot for better appreciation of the case. I also heard the Learned Advocate of the OP who is the purchaser. He purchased the disputed land on 12.04.2002. He claims to be a Co-sharer of the disputed land because he also owns 3 dhur of land in the same plot (i.e.1028) by virtue of sale deed dated 08.08.1998. Since he owns a land in the same big plot, he says, he is a Co-sharer. While agreeing that the vended plot, which he purchased in 2002, and the other plot which he purchased in 1998 are not adjacent, he claims that the land is being used for agricultural purposes and there are houses of various other persons namely Lalan Rai, Ambika Rai etc. Having heard Learned Advocates of both the parties and having perused the material available on record as well as the Lower Court Records, my own findings on the issue are as under:- (a) It is established that the Pre-emptor is an adjacent raiyat to the vended plot as is the finding of the Learned DCLR who held that the Pre-emptor's	

आदेश की क्रम सं० और तारीख 1	4 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	father Doodhnath Bhagat shares the boundary with the disputed land. (b) This fact has also been admitted by the OP in his pleading before the Court of Learned DCLR. Therefore, it is an admitted position that the Pre-emptor is an adjacent raiyat. (c) I do not agree with the contention of the OP that he is a Co-sharer just because he owns a land in the same plot. To be able to be a Co-sharer, one has to be a relative or have some right on the crops of the land under dispute by virtue of any written arrangement. No such arrangement has been provided by the OP to prove that he can claim a rightful share of the crop (if any) of the disputed land. By virtue of owning some land in the same plot, does not make him a Co-sharer. Therefore, it is also established that the OP is not a Co-sharer. (d) The OP is also not an adjacent raiyat to the vended plot as is evident from Nazri Naksha. It is the OP's Co-sharer, who is an adjacent raiyat to the vended plot. I also note that nowhere in his arguments or in his rejoinder before the Learned Lower Court, the OP has ever claimed that he is an adjacent raiyat. In the written notes of arguments submitted by the OP, he has not claimed that he is an adjacent raiyat to the disputed plot.	

आदेश की क्रम सं0 और तारीख 1	5 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	(e) Thus from the foregoing discussion, it is clear that the OP is neither an adjacent raiyat nor a Co-sharer. Whereas, the Pre-emptor is an adjacent raiyat. (f) However, in the above discourse of deciding as who is an adjacent raiyat, we should not lose sight of another important aspect of the land use of the vended plot. It needs to be considered carefully as to whether the land use is residential or agriculture. The size of the plot is also an important factor. (g) The size of the vended plot is 4½ dhur which is too small an area to carry on any meaningful agriculture in itself. However, if it gets merged with the adjoining plot of sizable area, then some agriculture may take place. (h) I find that there is a Government canal passing exactly parallel to the vended plot as well as other plots belonging to the Pre-emptor, the Co-sharer of the OP No. 2 and OP 2 himself. Therefore, it makes sense in the argument of the OP that the said vicinity is dotted with various houses and the movement in and out of these houses is through the boundaries of this canal. (i) I also find that this fact has not been disputed by the Pre-emptor that the OP already has a house in the nearby plot. There are houses of other persons also in the vicinity. Hence, the vicinity is largely	

आदेश की क्रम सं० और तारीख 1	6 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3

residential. Therefore, I do not think that Pre-emption law can be evoked in a case where the land is not used for agriculture purposes.

Conclusion:-

From the aforementioned findings, it is clear that the Petitioner who is the Pre-emptor is an adjacent raiyat. The OP, who is the purchaser, is neither an adjacent raiyat nor a Co-sharer.

Notwithstanding above, it is also clear that the land use of the disputed plot is primarily residential and not agriculture. In fact, the said Plot No. 1028 is already sufficiently fragmented in the sense that the Pre-emptor, the OP and the Co-sharer of OP owned a land in this huge plot. In fact, a canal also passes through the said Plot No. 1028.

It is also clear that the OP and various other persons have houses in around the vended land and this fact has not been denied by the Pre-emptor. In fact, Pre-emptor has already argued before the Learned DCLR that vegetables are being grown on the disputed plot hinting that the land use is not residential, but agricultural.

It is an admitted fact by both the parties that the land is in the possession of the OP and who has put his palani (thatched hut) on the disputed plot.

That be the case, it is established beyond doubt that this small 4½ dhur of land is being used by the OP purchaser for non agricultural purposes. Therefore, pre-

आदेश की क्रम सं0 और तारीख 1	7 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	emption law as defined under Section 16 (3) of Bihar Land Ceiling Act, 1961 cannot be invoked in such a case. In my opinion, the State should be very conservative in invoking Pre-emption law on private land transactions between two parties. The primary objective of Section 16 (3) of Bihar Land Ceiling Act, 1961 is to prevent fragmentation of agriculture holdings in order to ensure that the raiyat has all the land at one place and does agriculture in a convenient way. While enforcing Section 16(3), one should not forget that even the raiyats or ordinary villagers (who are not practicing agriculture) need small pieces of land to build houses and settle thereon. If we keep interfering on such individual small transactions, we would be needlessly promoting litigation without serving the larger calls as defined under Section 16(3) of Bihar Land Ceiling Act, 1961. The right under Section 16(3) is available only to 'raiyats' as defined under Section 2(k) of Bihar Land Ceiling Act, 1961. Since the raiyat is the one who cultivates the land, therefore, the primary objective of the vended land has to be agriculture. If the land is not being used for agricultural purpose, then Section 16 (3) does not apply in such cases. Therefore, in the instant case, no party qualifies to be a raiyat in so far as the vended land is concerned. Having said that, I hold that the purported land use in this case is largely residential and therefore Section 16 (3) shall not apply.	

आदेश की क्रम सं० और तारीख 1	8 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	In light of above, I find no reason to interfere with the order passed by the Learned Collector, Siwan or the Learned DCLR and accordingly, uphold the same. However, I set aside the portion of the Learned Collector, Siwan imposing a fine of Rs. 10,000 imposed on the OP Sri Ramswaroop Bhagat. Revision Dismissed. **Dictated & Corrected** 16/2/17 **K.K.Pathak** **Additional Member** **Board of Revenue, Bihar.** 16/2/17 **(K.K.Pathak)** **Additional Member** **Board of Revenue, Bihar.**	