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.:- 91/2006
Dist.:- Muzaffarpur

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

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Bharat Thakur - Petitioner/ Appellant

Versus

Smt. Ram Kali Devi & Others - Opposite party

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Appearance:

For the Appellant/Revisionist :Shri Arun Kumar Lal
For the OP :Shri Natraj Verma

ORDER

11.01.2017

This is a Pre-emption matter in which the Revision Petition was filed on 15.05.2006 against the order passed by Learned Additional Collector, Muzaffarpur on 04.04.2006 in Ceiling Appeal No. 5/1999-2000. The case was admitted for hearing on 22.06.2006.

Since then, the case remained part heard on many dates. The Lower Court Records also took time to reach. In the mean time, on 30.08.2012, the case was dismissed for default. Subsequently, a Restoration Petition was filed and the case was restored.

The case again came up for final hearing on 10.01.2017. The Learned Advocate of the Petitioner, who is the Pre-emptor, was present and heard in great detail. The

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	2	3

Learned Advocate of the OP, who is the purchaser, was also present and heard in great detail. Thus concluding the hearing, the order is being passed today.

As per the Learned Advocate of the Petitioner Pre-emptor, the disputed land was sold on 06.07.1998 and area of the land in dispute is 18 decimals. The Pre-emptor filed a Pre-emption application on 24.09.1998 before the court of the Learned DCLR. The Learned DCLR vide his order dated 15.03.1999 allowed the Pre-emption. Aggrieved by the order of the Learned DCLR, the purchaser filed an appeal before the Learned Additional Collector, who allowed the appeal on 04.04.2006.

Thus aggrieved by the order of the Learned Additional Collector, the Pre-emptor has filed this Revision Application.

As per the Learned Advocate of the Pre-emptor Petitioner, his ancestral land is adjacent to the disputed land. The purchaser (OP in this case) claims adjacency on account of a purchase of 2 decimal land of RS Plot No. 90 (from the same vendor). This 18 decimal land, which is the land in dispute, is purchased by the purchaser from the same vendor within a matter of few days. Moreover, the disputed land was purchased at a very low price of only Rs. 5000/-. The vendor is a lady who is now no more and she has no heirs.

The Learned Advocate of the Pre-emptor Petitioner further mentioned that even this 2 decimal land, which was sold by the lady was already acquired for Kanti Thermal Power Plant and hence the vendor was not

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technically the owner of the said plot and should not have sold it to the purchaser.

In response to the above averments, the Learned Advocate of the Purchaser (OP in this case) draws the attention of this court to Para 8 of his counter affidavit. The Learned Advocate suggests that there is no evidence of any formal partition of the ancestral property of the Pre-emptor, for him to claim that he has become an adjacent raiyat to the disputed plot. The disputed plot is No. 125 where as the ancestral plot of Pre-emptor is No. 128 and hence he is not an adjacent raiyat.

The Learned Advocate also files some judgements in support of his case.

The Learned Advocate of the OP further says that the disputed plot is in middle of the village surrounded by houses all over. He is in the possession of the land and wishes to use the land for the purpose of construction of house. The Learned Advocate draws the attention of this Court to Para 13 of the counter affidavit in support of her argument. The OP further denies that 2 decimals land is acquired by the Kanti Thermal Power Plant and also claims that he is a landless person.

Having heard both the Learned Advocates and having perused the material available on record as well as the Lower Court records, my own findings on the matter are as under:-

(a) That the land in dispute is only 18 decimals which means approximately 4000 sq.ft., which land is not sufficient in itself to carry

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	out any meaningful agriculture. It is also noted that there are houses in the vicinity and the disputed land is surrounded by residential structures. (b) It is an admitted position that the Pre-emptor is not related to the vendor or the vendee. Hence, there is no Co-sharer and the only issue to be decided is the adjacency. (c) The court of the Learned DCLR has held that the Pre-emptor is indeed the adjacent raiyat and hence, he ruled the case in his favour. Now, it is an admitted fact that the ancestral property of the Pre-emptor lies adjacent to the disputed plot. Only issue raised by the OP was that there is no formal partition for that ancestral property so as to allow the claim of the adjacency in favour of the Pre-emptor. (d) I also find that both the parties claim adjacency to the disputed plot. While the OP claims adjacency on account of her purchase of 2 decimal of land, the Pre-emptor Petitioner claims adjacency on account of his ancestral land. The Pre-emptor has not denied the argument of the OP that this land has not been formally partitioned so Pre-emptor still cannot legally claim to be an adjacent raiyat.	

आदेश की क्रम सं0 और तारीख़	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख़ सहित 3
	(e) It is surprising that the Learned DCLR does not mention the fact that the Pre-emptor has an ancestral property adjacent to the disputed plot. He has confined his observation that the sale deed in dispute was executed on 06.07.1998 whereas the 2 decimal land purchased by the purchaser (on which ground he claims adjacency) was executed on 08.07.1998. Therefore, on 06.07.1998, at the time of purchasing 18 decimal of land, the purchaser OP was, technically, not an adjacent raiyat and hence, he ruled in favour of the Pre-emptor. In my opinion the Learned DCLR has gone about handling the adjacency issue in a very mechanical manner and allowed Pre-emption application against the spirit of the Section 16 (3) of Bihar Land Ceiling Act, 1961 by ignoring a vital fact that the land use is purported to be non agricultural. Moreover, a small plot of land surrounded by houses cannot be used for any meaningful agriculture. Additionally, the Learned DCLR has not satisfied himself as to the nature of adjacency of the Pre-emptor and whether the ancestral property of the Pre-emptor has been formally partitioned or not.	

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Conclusion:-

In view of the foregoing, I find that the Learned DCLR has erred in invoking the Pre-emption laws needlessly. He has confined himself to deciding the adjacency under Section 16 (3) of Bihar Land Ceiling Act, 1961 ignoring in the process whether the disputed land is covered under the Pre-emption law or not. In my view, the Revenue Authorities need not invoke Pre-emption laws on small plots of land intended for residential or non-agricultural use.

The spirit of Pre-emption as laid down under Section 16 (3) is to prevent fragmentation of the agriculture holding. Moreover, this facility is available to a raiyat who wants to buy a land or prevent a fragmentation of land in order to cultivate that land.

In the instant dispute, the surroundings are already dotted by small plots as is evident from the Revenue Records. It is also an admitted fact that perhaps the land in vicinity is also under acquisition for water drainage of Kanti Thermal Power Plant. A prospective land acquisition, perhaps, pushes up the market value of the land as when a land acquisition process is started, the local people tend to buy land in the area in the hope that the owner of the land will get a higher compensation on the event of final acquisition.

Therefore, apparently this is essentially a dispute between two parties who want to buy land purely for commercial transaction and no agricultural activity is

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possible in the vicinity because of two reasons- firstly the vicinity is largely residential, secondly, nearby lands (if not the disputed land itself) are likely to be or have been acquired under Land Acquisition Act.

That be the case, the Revenue Authorities should not have interfered in any commercial/non-agricultural transaction where the primary purpose of buying a land is anything but agriculture. In that view of the matter, the Pre-emption proceeding should not have been allowed by the Learned DCLR.

Accordingly, the Additional Collector was correct in setting aside the order of the Learned DCLR. I see no reason to interfere with the order of the Learned Additional Collector.

Revision Dismissed.

Dictated & Corrected

11/1/2017

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

11/1/2017

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