
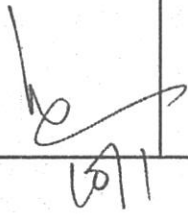
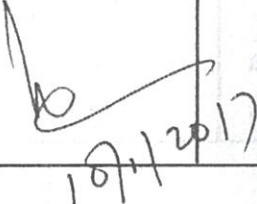


आदेश की क्रम सं० और तारीख	<p style="text-align: center;">1 आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p>आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>										
<p>10.01.2017</p> <p> 10/1</p>	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No. - 98/2006 Dist. - Sitamarhi</p> <p>PRESENT : - K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Ram Bhagat Sah and Others</td> <td style="width: 10%; text-align: center;">Versus</td> <td style="width: 40%;">- Petitioner/ Appellant</td> </tr> <tr> <td>Kapal Rai & Others</td> <td></td> <td>-Opposite party</td> </tr> </table> <p>=====</p> <p><u>Appearance:</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">For the Appellant/Revisionist</td> <td style="width: 50%;">:Shri Umakant Tiwari</td> </tr> <tr> <td>For the OP</td> <td>:Shri Shishir Kumar</td> </tr> </table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Revision Petition filed on 22.05.2006 against the order of the Learned Additional Collector, Sitamarhi in Pre-emption Appeal No. 2/2005-06. The case was admitted for hearing on 29.06.2006. Since then, the case remained part heard on many dates. Moreover, the Lower Court Records took time to reach.</p> <p>In the mean time, the case was dismissed for default on 22.04.2010 on account of the Petitioner remaining absent continuously on many dates. Subsequently, a Restoration Petition was filed and the Restoration was allowed on 08.09.2010. The matter then again remained part heard for many dates.</p>	Ram Bhagat Sah and Others	Versus	- Petitioner/ Appellant	Kapal Rai & Others		-Opposite party	For the Appellant/Revisionist	:Shri Umakant Tiwari	For the OP	:Shri Shishir Kumar	
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	<p>The case again came up for hearing on 20.12.2016 where nobody was present. The matter was adjourned to 06.01.2017. On this date, again, the Petitioner was absent however the Learned Advocate of the OP was present who pleaded that the case be dismissed on merits. He wanted to file written notes of argument to which he was advised to do so by 09.01.2017. The Learned Advocate of the OP has filed his written notes of argument on 09.01.2017.</p> <p>I note that the Petitioner has been absenting himself continuously since the last many dates. Hence, no more adjournment may be given as the case is already going on for the last 11 years. Therefore, this final order is being passed today. I have perused the material available on the record as well as the Lower Court Records. I also perused the written notes of argument submitted by the OP.</p> <p>For the background of the case, it may be mentioned that a Pre-emption case was filed by Sri Rambhagat Sah (the Revisionist) before the Learned DCLR, Sitamarhi who vide order dated 23.12.2005 allowed the Pre-emption. Aggrieved by this order, the OP Sri Kapal Rai (the purchaser) filed an appeal before the Learned Additional Collector who vide order dated 21.04.2006 set aside the order of the Lower Court and allowed the appeal in the favour of the purchaser.</p> <p>Thus, further aggrieved, the petitioner Sri Rambhagat Sah filed this Revision Application. From the perusal of the records and other materials, my own findings on the matter are as under:-</p>	

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	<p>(a) The vendee purchased the land in two plots of 17 decimals and 27 decimals (total 44 decimals). The Learned DCLR has held that the Pre-emptor is an adjoining raiyat but he has not given any basis for such decision. There are no findings by the Learned DCLR to suggest that how he came to the conclusion that the Pre-emptor is an adjacent raiyat and why the instant proceeding is covered under Section 16(3) of the Bihar Land Ceiling Act, 1961. Merely the fact that the Pre-emptor is an adjacent raiyat as per the sale deed does not mean that the case is covered under Section 16(3).</p> <p>(b) Nor the Learned DCLR has not made any observation to the fact that the purchaser is a landless person.</p> <p>(c) I also find a strange argument put forward by the OP, who is the purchaser, in the Lower Court that he purchased the land from the vendor Smt. Anita Singh, who as per a Succession Case (LA Case No. 4/94), which is still pending, has no has no right to sell the the land in dispute. The question comes to mind that if the vendor had no right to sell the land to the vendee, then why did the vendee purchase it and later raised this issue that since the sale deed is not valid hence the Pre-emption Proceeding would not lie.</p>	

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	<p>Apparently, this argument has been put forth by the vendee to defeat the Pre-emption case.</p> <p>(d) However, I also find that there is an important point being brought out by the OP Sri Kapal Rai of his being a under raiyat of the original khatiani riayat Ram Swarath Singh. It appears that about 43 years ago, the said Sri Ram Swarath Singh gave the land on Bataidar basis to the father of the OP. As per the OP, he is an under raiyat of the original khatiani landlord. However, he has not filed any paper to support his claim. Moreover, the sale deed in question does not mention any thing about his being a Bataidar. Hence, the Learned Additional Collector was right in ignoring his claim of Bataidar.</p> <p>(e) It also appears that the both the parties are adjacent to the disputed plot. The OP is also owning some land of 30 decimals from one Sri Lalan Prasad Singh in 1998 in an adjoining plot hence he also claims the adjacency in the area since 1998.</p> <p>(f) It is also clear that the OP has a house in the adjacent plot which fact has not been denied by the Revisionist.</p> <p>(g) Coming to the point whether the OP is a landless person or not, I find that Additional</p>	

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	<p>Collector has held that the OP is landless person who is having only 34 decimals of land other than the area of the disputed plot. I find that this fact would add some weight in favour of the OP considering the fact that the OP himself is an adjacent raiyat.</p> <p>Conclusion:-</p> <p>From the above finding, it is clear that both the parties are the adjacent raiyats to the disputed plot. That being the case, it is a settled principle of the Pre-emption law that if the vendee is a Co-sharer or an adjacent raiyat, then the Pre-emption fails. All other issues, whether the vendee is a landless person or not, whether he is a Bataidar of the original khatiani or not, are the issues which cannot be settled within the purview of the Pre-emption law as defined under Section 16(3) Bihar Land Ceiling Act, 1961.</p> <p>The Revenue Authorities therefore, must be conservative in their approach in allowing Pre-emption in cases where adjacency is the main issue. A plot may have more than one adjacent raiyats. This does not mean that one adjacent raiyat is allowed to interfere in a property transaction unless he is able to prove that his adjacency is stronger than any other adjacent raiyat on account of his being a Co-sharer as well.</p> <p>Even in that case, where a raiyat may be adjacent raiyat and a Co-sharer as well, Revenue Authorities must be hesitant in invoking Pre-emption laws needlessly and interfering in a private transaction made by the vendor</p>	

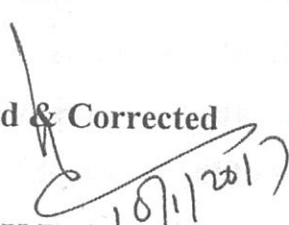
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with a fellow adjacent raiyat. To my mind, a vendor has the right to sell a piece of his land to one adjacent raiyat in preference to any other adjacent raiyat. That right of the vendor must be respected and hence it is often held that Pre-emption is weak right and should be resorted to only when there is a strong case for Pre-emption and where the land is sold to a rank outsider.

Since in the instant case, the purchaser OP is also an adjacent raiyat therefore the Pre-emption fails. In that view of the matter, I uphold the order of the Learned Additional Collector and find no reason to interfere with it.

Revision Dismissed.

Dictated & Corrected


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


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