

**In The Court of Commissioner, Saran Division, Chapra**

**Misc. Revision No. 466/2007**

**Umesh Prasad**

**Vrs.**

**Satyadeo Prasad & Ors.**

**ORDER**

08.09.2015- The instant revision application is directed against the impugned order passed by Addl. Collector, Saran in Misc. Appeal Case No. 01/2004 on 20.09.2007.

The brief facts of the case are that the disputed piece of land measuring 03 bigha 08 Katha 11 dhur situated in village- Nipania, P.S.- Issuapur in the district of saran which spread over in three R.s. Plot viz. 1751 as Bhinda, 1752 as pokhra and 1753 as Bhinda. Further case is that a Misc. suit was originally filed by one Sone lal singh for removing the encroachment from the above mentioned disputed land and also for correction of Jamabandi which was then running in the name of Ram Kishuna Kuar before C.O. Taraiya who vide order dated 10.09.2001 dropped the proceeding holding that Jamabandi is running in the name of Ram Kishna Kuar and her name was also entered in Register- ii. Thereafter, the record was sent to DCLR, Marhaurah who registered the case as Misc. Case No. 01/2002 and he later on recommended for cancellation of Jamabandi vide order dated 04.07.2007. Feeling aggrieved by the said order, O.Ps. preferred Misc. Appeal No. 03/2002 before Addl. Collector, Saran who vide his order dated 07.11.2002 set aside the order of DCLR dated 04.07.2002 and remanded the case to DCLR, Marhaurah with a direction to pass a fresh order in accordance with law after making local inspection in presence of both parties. The learned DCLR Marhaurah then visited the spot and after enquiring the matter passed order on 15.10.2004, wherein he held that the order passed by C.O. Taraiya is legal and valid and accordingly disposed of the case. Thereafter, on the death of original petitioner Sonelal Singh, Umesh Prasad, the present petitioner, representing the general public of the village preferred Misc. Appeal Case No. 01/2004 before Addl. Collector, Saran wherein they challenged the order passed by DCLR, Marhaurah. The learned Addl. Collector, after hearing the parties finally passed order on 20.09.2007 wherein he confirmed the order of DCLR, Marhaurah.

On being aggrieved by and dissatisfied with the aforesaid order passed by Addl. Collector, Saran, the petitioner has preferred this revision case before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner submitted in details as to how this case has been come up before this court. He further submitted that the said disputed land has been recorded in R.s. Khatiyon as Gair Mazurwa Aam Land and tress of the land has been recorded in the name of Most. Belwanti Kuar and Musmat. Ram Kishun Kuar in possession column. He also argued that in C.S. also the land has been recorded as Gair Mazurwa Aam land of which R.s. plot No. 1752 has been recorded as Pokhra and Plot No. 1751 and 1753 have been recorded as Bhinda of the pokhra and this pokhra and Bhinda are utilized by the public in general since the C.S. operation as customary right and a temple of lord shira has been established on the Bhinda and public used to visit the said temple for worship. He further submitted that the O.Ps. wanted to disturb the general right of people and hence a case before DCLR was filed. He further, while assailing the impugned order of Addl. Collector, Saran, submitted that although, attention of the court was drawn regarding the entry of Khatiyon and

*b*



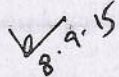
about possession and customary right of the petitioner but the learned Addl. Collector without considering the documents and evidence produced by the petitioner and also without considering the facts and circumstances of the case dismissed the appeal. He also argued that the learned court below ought to have held that Gair Mazurwa Aam land is the land of public and it is used by the public for customary right and also held that the ex-landlord had no right to settle the Gair Mazurwa Aam land to any body as it is the land of the public in general. The learned counsel lastly submitted that as the impugned order has been passed without assigning any reasons the same suffer from arbitrariness and hence the same is fit to be set aside.

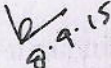
The learned counsel appearing on behalf of the O.Ps., submitted at the very outset of his argument that the disputed Plot No. 1751, 1752 and 1753 was a Gair Mazurwa Malik land and Ex-landlord Piyarchand Sah was in exclusive possession over the said land but it was wrongly mentioned in R.s. record of right as Gair Mazurwa Aam land and O.Ps. are the heirs of Ex-landlord Piyarchand Sah. He further said that the ex-landlord settled the disputed land in favour of Ram Kishuna Kuar much prior to year 1940 for the purpose of cultivation on fixed rental and on the basis of said settlement the Ex-landlord filed return in the Sirista of State Govt. in the name of Ram Kishuna Kuar. He further said that on the basis of said settlement Jamabandi No. 96 was created in the name of Ram Kishuna Kuar and the O.Ps. having their peaceful possession over the said land which was also found in the local inspection of DCLR. He further submitted that the petitioner with a view to harass the O.Ps. have filed this revision petition completely on frivolous ground and on wrong stand that Ex-landlord had no right to settle Gair Mazurwa Aam land, hence this revision is liable to be dismissed. The learned counsel also raised a question mark on the maintainability of second revision before this court in view of the alleged amendment in Bihar Tenants Holding (Maintenance of Records) Act.- 1973.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and from perusal of the impugned order, it is seen that the dispute between the parties is basically relates to the question as to whether the three R.s. plot Nos. 1751, 1752 and 1753 was wrongly or rightly settled by the Ex-landlord in favour of the ancestor of present respondents on the ground that the said land is stated to have been recorded as Gair Mazurwa Aam land and still being used by the people for customary rights as the nature of those lands recorded in Khatian as, Pokhra and Bhinda. I find that the learned DCLR as well as learned Addl. Collector has rightly held that the said land stands recorded in the name of Ram Kishuna Kuar on the basis of entry made in the record of right and running jamabandi as well as on local inspection.

For the aforementioned reasons, the impugned order is upheld and accordingly no case is made out for any interference by this court as such this revision application is dismissed.

Dictated and corrected by me.

  
Commissioner,  
Saran Division, Chapra

  
Commissioner,  
Saran Division, Chapra