

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 29/2014

Ram Sakal Sah

Vrs.

Harendra Singh & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 208/ 2012-13 on 05.11.2013.

The brief facts of the case are that the present respondent Harendra Singh R/o vill-Bishunpura, P.S. & Circle-Basantpur, Dist-Siwan filed a case before DCLR under the provision of BLDR Act in which the present appellant Ram Sakal Sah and eight others were impleaded as o.ps. In the said case the relief sought by the petitioner was that the land in question, having khata No. 70, R.S. plot No. 408, area 1 bigha 5 katha 6 dhur and plot No. 411, area 11 katha 6 dhur is recorded in khatian as Gair Mazurwa Malik land and in the possession Column the name of his grand father has been mentioned. His further prayer was that certain area of the said plot has been illegally captured by the present appellants (o.ps before DCLR) and they were also trying to capture some more land, as such the said land be measured and the same be vacated from illegal occupation. Thereafter, the learned DCLR after issuing notices to the parties, heard the case and finally vide order dt. 05.11.2013 directed the local C.O. to protect the said Gair Mazurwa land from encroachment and accordingly also initiate the process for cancelling the jamabandi and also initiate process for correction in the jamabandi existing in the name of one Shyam Narain Singh & ors. Feeling aggrieved by the said order, the present appellants (o.p. before DCLR) has preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the learned lower Court has completely misunderstood the provisions of BLDR Act and has wrongly decided the case against the appellant which is completely wrong in the eyes of law. He further argued that it was wrongly held by the lower Court and also exceeded its jurisdiction, in holding that the jamabandi created on the basis of return submitted by the ex-landlord in the favour of appellant is wrong. He also said that the learned lower Court has also failed to appreciate the admitted continuous possession of the appellants over the disputed land. The learned counsel while further assailing the impugned order argued that the learned lower Court has wrongly make out a third case regarding adjudication of jamabandi of the appellant which was not the case of either party. The learned counsel lastly said that as in the instant case, complicated question of title is involved, the learned DCLR should not have decided the case and on this ground the impugned order is fit to be set aside.



The learned counsel on the other hand, in his brief argument submitted that the impugned order is just and proper having no illegality. He further submitted that the jamabandi No. 67 is running in the name of the father of respondent and at present his possession also exist thereon and the appellants are raising their false claim over the said land. He lastly said that this appeal petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the land in question is recorded in khatiyan as Gair Mazurwa Malik land. Both parties lay their claim over the said land on the basis of so called jamabandi created in their favour. However, the learned DCLR while dealing with the case recorded the following findings which reads thus:

“ उपर्युक्त तथ्यों से स्पष्ट होता है कि प्रश्नगत भूखण्ड खाता नं०-70, सर्वे नं०-408, रकबा 1 बिगहा 5 कट्वा 6 धुर तथा सर्वे नं०-411, रकबा 11 कट्वा 6 धुर भूमि गैरमजरूआ मालिक जमीन है जिसकी न तो किसी अंश की बन्दोबस्ती ही किसी पक्षकार को किया गया है और न ही किसी भी पक्षकार के नाम से इस गैरमजरूआ मालिक जमीन का रिटर्न ही दाखिल है। अतः उपरोक्त जमीन बिहार सरकार की है। आवेदक ने जमाबंदी सं०-67 अवैध रूप से अपना नाम वो प्रश्नगत रकबा जुड़वा लिया है। साथ ही अंचलाधिकारी बसंतपुर ने जमाबंदी सुधार वाद सं०-09/83-84 में गैरमजरूआ मालिक जमीन को बिना बन्दोबस्ती का ही जमाबंदी ओलने का अवैध आदेश पारित कर दिया है। अतः प्रश्नगत भूमि खाता नं०-70 सर्वे नं०-408 रकबा 1 बिगहा 5 कट्वा 6 धुर तथा खाता नं०-70 सर्वे नं०-411 रकबा 11 कट्वा 6 धुर पर आवेदक का दावा स्मरित किया जाता है तथा साथ ही साथ अन्य पक्षकारों का दावा भी इस भूखण्ड पर नहीं बनता है। अंचलाधिकारी, बसंतपुर को आदेश दिया जाता है कि उक्त गैरमजरूआ मालिक जमीन को संरक्षित करें और अगर इस पर किसी प्रकार का अतिक्रमण हो तो अतिक्रमण वाद चलाकर अतिक्रमण से मुक्त करा ले तथा जमाबंदी नं०-67 में हरेन्द्र सिंह ने अपना नाम वो रकबा 1 बिगहा 5 कट्वा 6 धुर अवैध रूप से जुड़वा लिया है। अतः जमाबंदी नं०-67 से हरेन्द्र सिंह का नाम वो खाता नं०-70 को हटा दें। जमाबंदी नं०-286 श्याम नारायण सिंह वगैरह में खाता नं०-70, सर्वे नं०-408 का रकबा 15 धुर घटाने हेतु जमाबंदी सुधार की प्रक्रिया प्रारंभ करें। साथ ही जमाबंदी नं०-102 तथा जमाबंदी नं०-357 में भी जमाबंदी सुधार की प्रक्रिया प्रारंभ करें।”

Obviously, the above findings of learned DCLR seem to be correct and proper in the light of facts and circumstances of the case. I do not find any apparent error in the said findings so as to make any interference.

For the aforementioned reasons, the impugned order is upheld and this appeal petition is dismissed accordingly.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.