

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 302/2013

Srinath Singh & ors.

Vrs.

Bajnath Prasad & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 44/2013-14 on 24.09.2013.

The brief facts of the case are that the present appellant Srinath Singh S/o Late Ram Surat Singh and two others, all R/o Vill-Karhi khurd, P.S.-Basantpur, Dist-Siwan filed a case before DCLR, Maharajganj under the BLDR Act-2009 in which the present o.ps were impleaded as o.ps. In the said case the appellants (petitioner before DCLR) sought relief that the land measuring 5 katha 3 dhur recorded in khatiyani as Gair Mazurwa Malik land which was settled to him by the Ex-landlord on 21.07.1939 and subsequently rent has been fixed on 24.10.08 and from which the petitioner sold 8 dhur and 2 dhur to Rajesh Chauhan and Nand Kishor Chauhan over which the o.ps are creating hindrance, as such they be restrained from doing so. Thereafter, the learned DCLR heard the case and finally vide order dt. 24.09.2013 rejected the claim of the parties and also ordered for initiating the process for cancellation of jamabandi with respect to the said disputed land. Feeling aggrieved by the said order, the appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance on 14.09.2017 vide order dt. 20.07.2017. As such this case is being disposed of by ex-parte order.

The learned counsel appearing on behalf of the appellants at the very outset of his argument submitted that the impugned order is illegal and unjustified for the reason that the learned lower Court has exceeded its jurisdiction in holding that the rent fixation made by SDO, Maharajganj in favour of the appellant No.1 is illegal and the same has been cancelled by the Court below which is completely without jurisdiction. He further submitted that the learned DCLR did not consider the settlement made by the ex-landlord to which the appellant was entitled and even did not consider the long time possession. The learned counsel further submitted that even the documents like settlement, rent fixation proceeding and rent receipts were not taken into account by the learned lower Court which is illegal and on that ground the impugned order is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the appellants and on perusal of the impugned order, it is quite obvious that the disputed land fall under the category of Gair Mazurwa Land as recorded in khatiyani. The claim of the appellant is that the said disputed land was settled to him by the ex-landlord and thereafter he also secured jamabandi and rent fixation for the said land in his favour.

However, it is seen that the learned DCLR during the course of hearing of the case came to the finding that as the said disputed land stated to have been acquired by Patta and no return was filed after the vesting of Zamindari, the said land vested in the state. I do not find any error in the said finding of the learned DCLR. The claim of the appellant solely rests on the fact that rent fixation of the said land has been done in his favour. Obviously, this claim can not be accepted as a valid claim in absence of any return being filed by the EX-land lord at the time of abolition of Zamindari. The learned DCLR has dealt elaborately each and every aspects of the case properly before arriving at the final findings of fact. The concluding part of his order reads thus:

“उपर्युक्त तथ्यों से स्पष्ट होता है कि प्रश्नगत भूमि ख़ाता नं०-485 सर्वे नं०-834 रकबा 5 कट्ठा 13 धुर खतियान में गैरमजरूआ मालिक जमीन है जिसका रिटन इसके मालिक द्वारा किसी भी व्यक्ति के नाम से दाखिल नहीं किया गया है, अतः यह जमीन अब बिहार सरकार में निहित हो गयी है। ऐसे में उभय पक्षों का दावा इस गैरमजरूआ मालिक जमीन पर नहीं बनता है। अतः प्रश्नगत भूमि पर उभय पक्षों का दावा खारित किया जाता है और अंचलाधिकारी, बसंतपुर को आदेश दिया जाता है कि ख़ाता नं०-485 सर्वे नं०-834 रकबा 5 कट्ठा 13 धुर ग्राम कोडर गैरमजरूआ मालिक को संरक्षित करें। इस भूमि से संबंधित जमाबंदी सं०-168 जो श्रीनाथ सिंह के नाम से चल रही है उसको रद्द करने की अनुशंसा के साथ अपर समाहर्ता, सिवान को प्रतिवेदित करें।”

For the aforementioned reasons, the impugned order is upheld.

Accordingly this appeal petition is dismissed.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.