

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 38/2014
Prabhu Sah & ors.
Vrs.
Shambhu Sah Gond

The instant appeal petition is directed against the impugned order passed by DCLR, Gopalganj in Land Dispute Resolution case No. 61/2012-13 on 23.11.2013.

The brief facts of the case are that a record being BPHT revision case No. 01/2013 Shambhu Sah Gond Vs circle officer Gopalganj & ors vide memo No. 817 dt. 10.08.2013 by incharge Magistrate, District legal section to DCLR, Gopalganj with a direction that the matter be disposed of under the provision of Bihar Land Dispute Resolution Act 2009 after personally inspecting the issue involved. Thereafter, the learned DCLR inspected the spot on 23.09.2013 in presence of contesting parties and after going through the material available in the said record, finally vide order dt. 23.11.2013 ordered to C.O., Gopalganj to send proposal with his recommendation for cancellation of Basgit parcha issued to Rambha Kumari W/o Sindhu Sah. Feeling aggrieved by the said order the present appellant, who was respondent before DCLR, Gopalganj has preferred the instant appeal case before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent conspicuously despite being given last chance earlier. As such this appeal petition is disposed of by ex-parte order.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order is bad in law and against the facts on record. He further argued that the learned DCLR has assigned no cogent reasons in cancelling the parcha validly granted earlier by the state authority to Rambha Devi, the appellant No.3. He also pointed out that it is surprising to know that in the report of Amin dated 07.01.2013, there is mentioning of names of various persons to whom parchas have been granted in R.S. plot No. 331 but no steps have been taken so far for cancellation of the said parcha by the authority. He also submitted that the learned DCLR, Gopalganj had failed to appreciate that the grievances of Shambhu Sah will not come within the purview of BLDR Act or under the provision of B.P.H.T. Act. The learned counsel also argued that the portion of land as claimed by Shambhu Sah with respect to R.S. plot No. 331, which the father of Shambhu Sah had purchased from Kastkar Vishwanath Pathak by means of registered sale deed dt. 08.03.1994 and hence Shambhu Sah had no right to claim himself to be a person eligible to be considered for settlement of land under B.P.H.T. Act. He further said that there is already a 8 feet wide road exist connecting the house of the respondent and the same is also used by him. He lastly said that the impugned order is arbitrary and illegal as such the same is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the appellant and on perusal of the impugned order as well as the earlier order passed by learned DCLR on 13.10.2012. It appears that in the instant case dispute between the parties relates to two decimal of land for which Basgit parcha has been issued in favour of one Rambha Kumari daughter-in-law of the present appellant. The contention of the respondent before learned DCLR was that by issuance of parcha with respect to said 2 decimal land in favour of Rambha Devi, the connectivity of the road from his house has been obstructed. It is seen that the learned DCLR while resolving the

dispute finally arrived at his findings after visiting the said disputed land whereon he found that by issuance of the parcha the road connectivity from house of Shambhu Sah has been blocked and even the parcha issued is also not as per provision of the Act. The relevant portion of the order reads thus:-

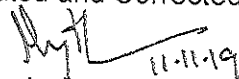
“मैंने दिनांक 23.09.13 को उभय पक्षों के समक्ष विवादित स्थल का जांच किया उक्त भूमि से संबंधित इस न्यायालय द्वारा भूमि विवाद निराकरण वाद सं०-61/11-12 शंभू साह बनाम प्रभू साह में दिनांक 13.10.12 को आदेश पारित कर अंचल पदाधिकारी, गोपालगंज को निदेश दिया गया था कि प्रथम पक्ष से मापी शुल्क प्राप्त कर उभय पक्ष के कागजात के आधार उप भूमि का सीमांकन करा देगें परन्तु उक्त वाद के निष्पादन के बीच में ही अंचल पदाधिकारी, गोपालगंज ने वाद सं०-01/12 से आवेदिका श्री रम्भा कुमारी जौजे सिन्धु साह (जो विपक्षी के पतोहु है) सा०-अमवाँ नकछेद के नाम मौजा-अमवाँ नकछेद थाना-50 के खाता नं०-166, खेसरा नं०-331, रकबा 0-02 डी० भूमि का वासगीत पर्चा निर्गत कर दिया गया है। अंचल पदाधिकारी द्वारा विपक्षी के पतोहु के नाम से वासगीत पर्चा निर्गत करने के फलस्वरूप श्री शम्भू साह को आने-जाने का रास्ता अवरुद्ध हो गया है। मैंने स्थल जांच में पाया कि अंचल पदाधिकारी द्वारा आवेदिका के नाम से वासगीत पर्चा निर्गत किया गया है वह नियमानुसार नहीं है। अंचल पदाधिकारी द्वारा अपने आदेश फलक में अंकित किया गया है, कि भ्रमण के दौरान स्थल जांच किया, परन्तु अगर अंचल पदाधिकारी द्वारा विवादित स्थल का जांच किया जाता तो उनके द्वारा आवेदिका के नाम वासगीत पर्चा निर्गत नहीं किया जाता। अंचल पदाधिकारी गोपालगंज को आदेश दिया जाता है कि वासगीत पर्चा वाद सं०-01/12 रम्भा कुमारी जौजे सिन्धु साह सा०-अमवा नकछेद के नाम से निर्गत वासगीत पर्चा को रद्द करने का प्रस्ताव अपने अनुशंसा के साथ अधोहस्ताक्षरी को भेजे। आदेश की प्रति अंचल पदाधिकारी, गोपालगंज को भेजे। ”


Obviously, the aforementioned findings of the learned DCLR seems to be full of controversy and erroneous in view of the fact that such a contradictory findings of fact by two DCLR's further complicated the issue instead of resolving the same. Since both parties are holding parcha in the said plot No. 331 along with some other persons, validly issued to them on the recommendation of circle officer, then there appears no valid ground to recommend for cancellation of Basgit parcha of only one person only on the ground that by issuance of said basgit parcha the connectivity of road has been obstructed. The learned counsel for the appellant is of the view that there is already brick road, 8 feet wide exist which connects the house of the respondent. In that situation the learned DCLR should not have passed such a order for cancellation of Basgit parcha. Thus it is apparent that the learned DCLR while visiting the spot for ascertaining the dispute existing between the parties arrived at a wrong finding of fact with respect to dispute between the parties and recommended for cancellation of parcha obviously such findings of fact can not be upheld.

For the aforementioned reasons, the impugned order of learned DCLR, Gopalganj passed in Land Dispute Resolution case No. 61/2012-13 on 23.11.13 is not sustainable and hence the same is set aside. The case is remitted back to learned DCLR, Gopalganj for reconsideration and to pass a fresh order after proper verification of all the relevant documents with respect to grant of Basgit parcha to both parties as well as whether the road is obstructed or not and dispose of the matter in accordance with law after affording opportunity of hearing to the parties.

With aforesaid observations and directions, this appeal petition is disposed of.

Dictated and Corrected by me.


11.11.19
Commissioner
Saran Division, Chapra.


11.11.19
Commissioner
Saran Division, Chapra.