

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 194/2014
Binod Prasad.

Vrs.
Aash Ahmad Mian & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 99/2013-14 on 16.06.14.

The brief fact of the case are that the present respondent Aash Ahmad Mian S/o Late Kamal Mian & 4 others of R/o Vill-Rajpur, Circle-Kateya, Dist-Gopalganj filed a case before DCLR, Hathua in which the present appellant was made as o.p. In the said case the prayer of the present o.p. as petitioner was that the disputed piece of land measuring 19 decimal, plot No. 654, khata No. 242 situated in Mouza Koisa khurd is a Gair Mazurwa Malik Parti Kadim and at present used as Rasta for which Bhoodan Praman Patra has been used wrongly as a recommendation may be made for cancelling the said Bhoodan certificate. Thereafter, the learned DCLR, after hearing the case finally vide order dt. 16.06.14 ordered for sending proposal to Bhoodan Yagna Committee.

Feeling aggrieved by the said order the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very outset of his argument assailed the impugned order is not justified and illegal. He further argued that the order of learned DCLR, Hathua is against law and facts of the case and lower court misunderstood the scope of the case and evidence required for the same. He further submitted that in the BLDR act the learned DCLR has no jurisdiction to cancel any document and on the facts on which relief for cancellation of the parcha of appellant was sought by court can only be decided after adducing oral evidence. He also argued that in north of the purchase land of appellant is road which about 30 ft. in width which is still in existence. In spite of this the learned DCLR going against his jurisdiction without taking evidence, has held that Rasta land has been settled to respondent by purcha. The learned counsel argued that the learned lower Court has no jurisdiction to send this case to Bhoodan Yagna Committee and there is no such provision in BLDR Act. He also argued that Bhoodan Yagna Committee is not subordinate to DCLR so the order passed by DCLR is against law, illegal and without jurisdiction as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent, on the other hand, opposed the arguments forwarded by the learned counsel for the appellant and stated that the very nature of land is Gair Mazurwa Malik land as recorded in R.S. Khatyan. He further submitted that the said land is used as Rasta for several years. He further submitted that the Ex-landlord has never donated the said land in Bhoodan Yagna Committee. The learned counsel further submitted that the learned DCLR has got full right under the BLDR Act with respect to nature of dispute brought before him for resolution. He further submitted that the appellant prepared a forged and fabricated Praman Patra with respect to disputed land and on that basis he claim his right. It is also submitted that the DCLR's order is not a final order but



actually he asked for a report from Bhoodan Yagna Committee as such appeal petition is not maintainable and hence the same is fit to be rejected.

Considering the facts and circumstances of the case, material available on records, rival submission forwarded by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the disputed land is recorded in khatiyani as Gair Mazurwa Malik land and the same is being used as Rasta. The sole claim of the appellants is that the said disputed land has been settled to them by Bhoodan Yagna Committee and even jamabandi also created in their favour and in that situation, the learned DCLR was not competent under the BLDR Act. to pass the impugned order. On the other hand, the claim of the respondent is that the said land being Gair Mazurwa Malik land and the same is being used as Rasta, the said land was never donated by the Ex-landlord to Bhoodan Yagna Committee and the order passed by learned DCLR is legal and valid. It is to be noted that the learned DCLR while disposing of the case finally arrived at the following findings of fact:-

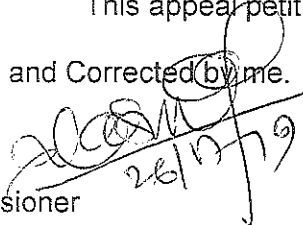
"उभय पक्ष के विद्वान अधिवक्ता का बहस सुनने, प्रस्तुत दस्तावेजी साक्ष्यों के अवलोकन से स्पष्ट है कि प्रश्नगत जमीन पूर्व से ही रास्ता एवं सार्वजनिक उपयोग हेतु प्रयुक्त होता रहा है। वादीगण द्वारा प्रस्तुत दस्तावेज में अंकित चौहदी में इसे रास्ता अंकित किया है परन्तु भूदान यज्ञ अधिनियम के अन्तर्गत इस जमीन का भूदान प्रमाण पत्र प्रतिवादी तथा उसके भाई को संयुक्त रूप से प्राप्त होकर लगान निर्धारण के माध्यम से जमाबंदी कायम है। सार्वजनिक उपयोग की जमीन का प्रमाण पत्र निर्गत करने से आम आदमी को परेशानी हो रही है। उक्त परिपेक्ष्य में प्रश्नगत जमीन के निस्वत हेतु प्रस्ताव बिहार भूदान यज्ञ कमेटी एवं जिला भूदान यज्ञ कार्यालय को भेजी जाय।"

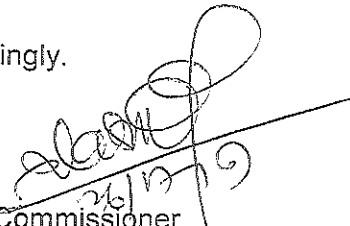
I do not find any apparent error in the said findings of fact by DCLR in view of the nature of dispute between the parties.

As such the impugned order is upheld.

This appeal petition lacking merit is dismissed accordingly.

Dictated and Corrected by me.


26/11/19
Commissioner
Saran Division, Chapra.


26/11/19
Commissioner
Saran Division, Chapra.