

In The Court of Commissioner, Saran Division, Chapra
Jamabandi Correction Revision No. 224/2016

Ramesh Tiwari

Vrs.

Baliram Ram & ors.

ORDER

The instant revision petition is directed against the impugned order passed by learned Collector, Gopalganj in Jamabandi Cancellation Appeal case No. 05/2016 on 21.10.2016.

The brief facts of the case are that one Ramesh Tiwari S/o Late Ramadhar Tiwari, R/o Vill-Karkatha, P.S.-Kateya, Dist-Gopalganj filed a case bearing No. Mutation Appeal case No. 01/2010-11 before Addl. Collector, Gopalganj and in the said case order passed by DCLR, Hathua in Bhoodan Rent Fixation case No. 04/2009-10 dt. 11.08.2009 was under challenge. The disputed land having area 22 decimal, khesera No. 67 and khata No. 240 situate in Mouza Karkatha was involved. In the said case Baliram Ram and state of Bihar were made as o.ps. The learned Addl. Collector after hearing the case finally vide order dt. 24.01.2013 allowed the said case. Feeling aggrieved by the said order, the present respondent approached the Hon'ble High Court by way of preferring CWJC No. 7393/2013 and the Hon'ble High Court was pleased to grant liberty to the petitioner (the present respondent) to approach the revisional authority prescribed under the provisions of the Bihar Land Mutation Act, 2011 for grant of appropriate relief. The present respondent instead of approaching the Collector, Gopalganj filed a case bearing Mutation Revision No. 46/2016 before this Court. This Court on finding that the said case was not maintainable before this Court disposed of the said case vide order dt. 05.05.2016. Thereafter the petitioner approached, the Collector, Gopalganj and filed Jamabandi Cancellation Appeal No. 05/2016 before Collector, Gopalganj. The learned Collector after hearing the parties finally vide order dt. 21.10.2016 allowed the said case and accordingly set aside the order dt. 24.01.13, passed by Addl. Collector, Gopalganj. Feeling aggrieved by the said order the present petitioner has preferred the instant revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order, submitted that the same is legally not a correct order. He further submitted that the order of D.M. Gopalganj is bad in law and against the real facts involved in this case and documents on the record. He also argued that from the perusal of the grounds of appeal it would transpire that the same had been filed under section 9(6) of Bihar Mutation Law which was not maintainable. For that the learned D.M. has not considered the fact that without giving notice to the petitioner and without cancellation of jamabandi running in the name of father of the petitioner on the basis of settlement by Hathua Raj as early in 1938 and since the date of settlement father of the petitioner and petitioner have been coming in possession over settled land, hence the order of fixation of rent on the basis Praman Patra of Bhoodan Yagna Committee was quite illegal, fraudulent and void. He also submitted that besides the order of fixation of rent in case No. 04/2009 was not set aside in case filed by Hari Narayan Tiwari and the same was confirmed in T.S. No. 225/95 against the persons who claimed possession over portion of R.S. plot No. 240. He further argued that the learned D.M. has not considered the document of possession filed by the petitioner in appeal No. 05/2016. For that 9 katha 5 dhur land part plot No. 240 of khata No. 67 of village Karkatha P.S. Kateyan, Dist-Gopalganj has been settled to father of petitioner by Hathua Raj as early in 1938 before vesting of jamindari to the State Government and without any document of donation that Hathua Raj portion of plot No. 240 was donated to Bhoodan Yagna Committee the Court below ought not have held the portion of land settled by Hathua Raj was also donated to Bhoodan Yagna Committee. The learned counsel also stated that Praman Patra issued by Bhoodan Yagna Committee in respect to portion of settled land of the petitioner without giving any personal notice to the petitioner was

illegal and in-operative and on that basis without notice to the petitioner, fixation of rent on basis of Praman Patra was completely illegal, void and inoperative. For that so far correction of jamabandi Mutation and fixation of rent, the question of possession of the land is most essential and there was sufficient documents produced by petitioner in Mutation Appeal No. 05 of 2016, the impugned order of the Collector, Gopalganj is illegal and liable to be set aside. For that he learned D.M. without considering the document available on the record wrongly held that the petitioner did not file appeal against the fixation of rent. For that portion of land possessed by the petitioner which was encroached by O.P. No. 1 and against the encroachment petitioner filed T.S. No. 140 of 2011 against O.P. No. 1 and Commissioner, Bhoodan Yagna Committed which was pending since 2011 in competent Civil Court, Gopalganj and during pendency of the same the order passed by D.M. Gopalganj in jamabandi Cancellation Appeal No. 05/2016 is illegal. He also argued that the order of the learned D.M. Gopalganj in Jamabandi Cancellation Appeal No. 05/2016 is otherwise erroneous and liable to be set aside. He further prayed that this revision petition be allowed by setting aside the order of D.M. Gopalganj dt. 21.10.2016.

The learned counsel appearing on behalf of the respondent while supporting the impugned order, submitted that the same is legal and proper. He further submitted that the aforesaid jamabandi correction revision is not legally maintainable and is fit to be dismissed. He also argued that R.S. plot No. 67 measuring 1-8-5 dhur of khata No. 240 situated in village Karkatha was Gairmajurwa Malik land parti kadim of ex-landlord Hathua state. That Hathua state donated the said plot to Bhoodan and the same was confirmed in Bhoodan by case No. 90/70-71 and Bhoodan got right, title and possession upon it. That out of plot No. 67 Bhoodan settled 22 decimals of land of disputed plot to appellant by Bhoodan Praman Patra dt. 18.12.1976 on which the appellant being a landless Harijan is coming in possession having hut, katrain, Nad, Khuta etc. The said settled 22 decimalss land is towards north east corner of disputed plot. Hence in Bhoodan Praman Patra respondent's father Ramadhar Tiwari was mentioned in northern boundary because in north of disputed land. He holds another plot which is his own land. It is also argued that in Praman Patra in southern boundary part of disputed plot, eastern boundary read and in western boundary part of disputed plot was mentioned and on this piece of land appellant is coming in possession. That the appellant applied for fixation of rent as per section 18 of Bhoodan Act on the basis of Praman Patra upon which C.O. Kateya directed the C.I. & K.C. to make spot enquiry and also directed the Amin to measure the disputed land accordingly. Thereafter they held local inquiry and found possession of appellant having hut, katran and Nad, Khunta etc. upon it and submitted report accordingly and thereafter C.O. also held spot enquiry himself and found possession of appellant in manner reported by K.C. and C.I. had also issued public notice but nobody filed objection despite of service of notice and hence the C.O. sent his recommendation for fixing rent to DCLR, Hathua and the DCLR passed order dt. 11.08.2009 in case No. 04/09-10 to fix the rent and accordingly jamabandi No. 1168 was created in the name of appellant in register-11 of Bihar State. That the respondent thereafter did not file any fixation appeal before the competent authority as provided by section 17 of Bihar Bhoodan Act. He also said that a time barred appeal mutation appeal No. 01/10-11 in the Court of Addl. Collector, Gopalganj was filed. The learned Addl. Collector set aside the order of DCLR dt. 11.08.2009 and order dt. 28.01.2010 passed by C.O. by his order dt. 24.01.2013 on sole ground that DCLR has set aside the order of Bhoodan rent fixation case No. 04/09-10 by his order dt. 23.03.11 passed in jamabandi correction case No. 12/10-11 and that T.S. No. 225/95 is going on. That the appellant filed CWJC No. 7393/2013 in Hon'ble High Court, Patna against the order of Addl. Collector, but the same was withdrawn on 10.11.15 with liberty to file revision under the provisions of Bihar Land Mutation Act and thereafter the revisionists filed mutation revision NO. 46/16 in the Court of Commissioner, Saran Division, Chapra which was disposed of by order dt. 05.05.2016. He further strongly submitted that the learned Collector, Gopalganj after considering the points of law and documents filed by both the parties finally passed order whereby he allowed the said appeal case as such there is no illegality in the impugned order and the same is fit to be upheld.

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 on perusal of the impugned order, it is seen that the disputed piece of land which total area is 22 decimal over which both parties lay their claim on one or other basis. The claim of the petitioner is that the said land was settled to his father Ramadhar Tiwari by erstwhile Hathua state through Nazarana Patta in the year 1938 and since then they are coming in peaceful possession and subsequently jamabandi No. 683 was also opened in the year 1962-63 and they have been paying rent to the state. The further claim of the petitioner is that the said land has been wrongly got settled the said land by the respondent from Bhoodan Yagna Committee. On the other hand, the claim of the respondent is that out of 22 decimal land, 0.21 decimal land has been settled to him in the year 1976 by Bhoodan Committee and jamabandi No. 1168 has also been created jamabandi in favour of petitioner on the basis of Nazarana patta of Hathua Raj is incorrect. Thus, it is obvious that in the instant case, both parties claim their respective jamabandi as valid. It is also seen that the learned Collector while disposing of the appeal went on to set aside the order passed by Addl. Collector, Gopalganj as the said order was held against the relevant provision and without jurisdiction. The relevant portion of the impugned order reads thus:-


“सम्पूर्ण तथ्यों पर विचारोपरान्त यह स्पष्ट होता है कि अपर समाहर्ता, गोपालगंज का प्रश्नगत आदेश सुसंगत प्रावधानों एवं क्षेत्राधिकार के अन्तर्गत नहीं है। भूदान लगान निर्धारण आदेश के विरुद्ध अपील दाखिल होना चाहिए न की दाखिल खारिज पुनर्वाद। दूसरी ओर अभिलेख में उपलब्ध तथ्यों से यह भी स्पष्ट होता है कि विवादित जमीन दिनांक 24.04.1973 को ही भूदान में सम्पुष्ट है जिसके विरुद्ध कोई अपील दाखिल नहीं किया गया है। विपक्षी द्वारा भी सम्पुष्ट आदेश या अपीलकर्ता को प्राप्त भूदान प्रमाण पत्र या भूदान लगान निर्धारित आदेश को ससमय अपीलीय न्यायालय में चुनौती नहीं दी गयी है। इससे विवादित जमीन पर विपक्षी का दखल का दावा कमजोर प्रतीत होता है। साथ ही भूदान में सम्पुष्ट जमीन का हकियत भूदान में निहित हो जाता है। अतः उपरोक्त अभिमत के साथ प्रश्नगत निम्न न्यायालय आदेश दिनांक 24.01.2013 निरस्त किया जाता है। साथ ही जहाँ तक विपक्षी के नाम कायम जमाबंदी का प्रश्न है, उक्त जमाबंदी की वैधता का तो अपना दावा सक्षम न्यायालय के समक्ष प्रस्तुत कर सकते हैं।”

From the above findings of the learned Collector, it appears that his said findings with respect to the validity of the claim of the respondent is entirely based on the fact that no appeal has been filed by the petitioner against the Bhoodan Praman patra, order of confirmation of the disputed land as well as rent fixation order passed in favour of the respondent by the competent authority and as such the claim of present petitioner becomes weak. This Court finds difficulty in accepting the said findings of the Collector as the same is not in conformity with the entire facts and circumstances of the case. In fact, the claim of appellant has been denied mainly on technical grounds as he failed to challenge the claim of the respondent under the provisions of Bihar Bhoodan Act-as held by Collector. The claim of the petitioner that a title suit No. 140/2011 has also been filed for the said disputed land. Thus, in view of the conflicting findings of fact by learned Addl. Collector and Collector, on the basis of same material facts of the case, this Court finds that the impugned order of Collector, Gopalganj is not sustainable in law as the same is based on technicalities rather than on correct appreciation of the documents available on records.

Thus, for the aforesaid reasons, the impugned order of Collector, Gopalganj is set aside and the case is remitted back for passing a fresh order after careful examination of all the relevant documents regarding claim of the parties and to dispose of the case after hearing the parties.

With the aforesaid observations and directions, the instant revision petition is disposed of.

Dictated and Corrected by me.


11.11.19
Commissioner
Saran Division, Chapra.


11.11.19
Commissioner
Saran Division, Chapra.