

**In The Court of Commissioner, Saran Division, Chapra**  
**B.L.D.R. Appeal No. 369/2013**

**Shyamu Ram**

**Vrs.**

**Harihar Ram**

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 16/2013-14 on 25.11.2013.

The brief facts of the case are that the present respondent Harihar Ram S/o Jang Bahadur Ram, R/o Lachan Tola, P.O.-Songarhwa, P.S.& circle-Fulwaria, Dist-Gopalganj filed a petition before Collector, Gopalganj which led to initiation of a case bearing Land Dispute case No. 16/2013-14 under the provision of Bihar Land Dispute Resolution Act-2009 by DCLR Hathua. Furthermore, the present appellant was made as o.p in the said case pursuant to a supplementary petition filed by the present respondent as petitioner with such prayer. Further case is that as 6 decimal of land was settled to father of the present appellant under the provision of BPHT Act from plot No. 349 khata No. 94 of Mouza Fulwaria, the present respondent being aggrieved by the said settlement of the land which was settled to his ancestor by Bhoodan Yagna Committee he filed the case for cancellation of the of the said settlement. The learned DCLR after hearing the parties finally vide order dt. 25.11.2013 recommended for the cancellation of the said settlement. 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 submitted that the impugned order is bad, illegal and erroneous. He further argued that the plot No. 349 under khata No. 94 was the Gair Mazurwa land of Ex-landlord of Hathua Raj and from the time of ex-landlord and before abolition of Zamindari, the ancestor of the appellant remained in possession over the said land with oral permission of Hathua Raj. He also submitted that the learned DCLR ought to have held that the said disputed land measuring 6 decimal was also allotted to Sheo Mangal Ram, the father of the appellant by circle office, Uchakagaon vide P.P. case No. 06/88-89 dt. 18.07.88 and the learned DCLR has wrongly held that no any case No. is mentioned in the P.P.H Parcha which creates in doubt for genuineness of the parcha. He also submitted that the boundary of P.P.H parcha and Bhoodan Parman Patra is quite different and it was on the basis of possession of over the said land by the appellant the said parcha has been issued. It has also been submitted that the learned DCLR ought to have held that the disputed land has been covered by boundary and an iron gate has been fixed as main gate of the house. He also strongly submitted that the learned lower Court ought to have held that this matter has already been decided by learned DCLR vide order dt. 26.03.2012 in Land Dispute case No. 112/2012 in favour of appellant regarding the same land but respondent could not file any appeal hence the order passed earlier is binding on the respondent and the fact is that appellant has got no other land for residence purpose, except the disputed land. He lastly said that the impugned order being illegal, fit to be set aside and appeal be allowed.

The learned counsel appearing for the respondent, strongly opposed the pleadings forwarded by the learned counsel for the appellant and submitted that the appellant is claiming their right over the said 6 decimal land on the basis of forged document and even the Addl. Collector as well as C.O. have found that the said land has been settled to Bhoodan

Yagna Committee. He further said that the appellant's appeal is neither maintainable in law nor in facts as the grounds for appeal is not based on facts. He further said the said land being Gair Mazurwa Parti kadim land which was donated by the ex-landlord to Bhoodan Yagna Committee and the same was confirmed and subsequently the Bhoodan committee settled the said land to respondents in the year 1975 and parman patra has been issued. The learned counsel further submitted that no parcha can be issued with respect to Gair Mazurwa Malik land under Basgit parcha and moreover, the land was settled with respondents by Bhoodan Committee in the year 1975. He lastly said that the impugned order is reasoned, speaking and valid as such 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 both parties lay their claim over the said disputed area 6 decimal of land on one or another basis. The claim of the appellant is that the said land was settled to his father under BPHT Act in the year 1988 whereas the claim of the respondent is that the said land was settled to them by Bihar Bhoodan Yagna Committee in 1975. It is seen that the learned DCLR while deciding the case arrived at the correct findings of fact that the land itself being Gair Mazurwa Malik Parti Kadim, the said land can not be settled under the BPHT Act. He also held that the said Basgit parcha of the appellant was a doubtful document as there was no mention of any record no. and even in the inquiry report forwarded to him by Public Grievances Cell of the district, recommended for cancellation of the same. The relevant portion of the impugned order reads thus:-

“उपरोक्त तथ्यों से स्पष्ट है कि प्रश्नगत जमीन गैर मजरुआ मालिक परती कदीम है। खेसरा सं०-३४९ का कुल रकवा ६४ डी० भूदान संपुष्ट वाद सं०-१९/१९७०-७१ के द्वारा संपुष्ट है। वादी के पूवज की इसी में से ६ डी० जमीन का भूदान यज्ञ कमिटी के माध्यम से वर्ष १९७५ ई० में प्रमाण पत्र प्राप्त है। प्रतिवादी के पिता के नाम से वासगीत पर्चा प्राप्त होने का प्रमाण पत्र के रूप में जी फार्म की छायाप्रति प्रस्तुत किया गया है। जिसपर वर्ष १९८८-८९ तो अंकित है परन्तु अभिलेख सं० अंकित नहीं हैं। गैर मजरुआ मालिक जमीन से वासगीत पर्चा निर्गत करने का कोई प्रावधान नहीं है। अपर समाहर्ता, गोपालगंज के जांच प्रतिवेदन भी उक्त वासगीत पर्चा का प्रावधानानुसार रद्द करने की बात कही गई है। उक्त परिपेक्ष्य में अंचल अधिकारी फुलवरिया को आदेश दिया जाता है कि गैर मजरुआ मालिक परती कदीम जमीन से निर्गत किए गए वासगीत पर्चा को वासगीत अभिलेख से मिलान करके उसे रद्द करने के लिए समक्ष न्यायालय समाहर्ता के न्यायालय में अभिलेख अनुशंसा के साथ भेजें। जांच क्रम में यदि वासगीत पर्चा फर्जी पाई जाती है तो प्रतिवादी के विरुद्ध कानुनी कार्रवाई की जाय। वासगीत पर्चा के आधार पर यदि जमाबंदी कायम कर दी गई हो तो तत्काल उसे स्थगित किया जाय। प्रतिवादी की आदेश है कि वादी के दखल कब्जे में किसी प्रकार का व्यवधान उत्पन्न नहीं करें। बिहार भूमि विवाद निराकरण अधिनियम २००९ एवं संशोधित अधिनियम २०१२ की धारा-१५ की उपधारा-२ के अन्तर्गत आदेश अनुपालनार्थ अंचल अधिकारी फुलवरिया को भेजे।”

Thus, I do not find any apparent infirmity in the above findings of learned DCLR. As such the same is upheld. This appeal petition being devoid of any merit is dismissed.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.