

**In The Court of Commissioner, Saran Division, Chapra**  
**Land Settlement Rev. No. 119/2009**  
**Upendra Kumar Gaur & ors.**

**Vrs.**

**Shailendra Kumar Singh & ors.**

**ORDER**

The instant revision petition is directed against the impugned order passed by Addl. Collector, Siwan in Land Settlement Appeal case No. 12/2005-06 on 11.09.2009.

The brief facts of the case are that the present petitioner alongwith other four persons, all resident of village, Mohammadpur patti, Cirle-Goreyakothi, Dist-Siwan filed an application before C.O. Goreyakothi with a prayer that the land in question appertaining to khata No. 490, plot No. 709 area 7 katha 11 dhur situate in Mouza Mohammadpur, Cirle-Goreyakothi being a Gair Mazurwa Malik land put of which 2 decimal of land be settled to them as the said land has been coming in their possession. Thereafter Land settlement case No. 07/2005-06 was initiate by concerned C.O. and in course of inquiry, the possession of petitioner's was found and accordingly he recommended for the settlement in favour of the petitioners, to the SDO, Maharajganj. Meanwhile some people having land surrounding plot No. 709, filed objection before SDO, on the ground that as the said land was being used as Rasta, settlement may not be done in favour of the petitioner resulting in the rejection of the proposal sent by C.O. by SDO, Maharajganj vide order dt. 17.09.2005. Feeling aggrieved by the said order, the petitioner preferred an appeal bearing Land Settlement Appeal case No. 12/2005-06 before Addl. Collector, Siwan. The learned Addl. Collector, Siwan after hearing the parties through a detailed order dt. 11.09.2009 finally held that there was no need of any interference in the said order of SDO, Maharajganj dt. 17.09.2005 and accordingly he dismissed the said appeal case.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Siwan, the present petitioners have preferred the instant revision application before this Court.

Heard the learned counsel for the parties as well as learned G.P.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument submitted that the said disputed land is recorded in khatian as Gair Mazurwa Malik parti kadim and Babu Laxami Narayan Singh was the Ex-landlord. He further argued that the ancestors of the petitioners rendered service to the ex-landlord who after becoming pleased with their services, orally settled the said land to them much before the abolition of Zamindari in the year 1946 without taking any Nazrana as such the settlee got their raiyati right on the basis of adverse possession but then the landlord could not file return. The learned counsel further said that it was on that basis the petitioners filed petition for settlement before C.O. Goreyakothi and favourable recommendation was made by C.O. but the learned SDO, rejected the said recommendation. The learned counsel further argued that some persons wrongly filed objection on the ground that the said land being used by common people as well as students as Rasta for going to temple and school. He further stated that the objection raised by the o.ps were inquired into and even measurement was done during which o.ps were present and their objection were removed by a formula that out of total land 7 katha 11 dhur, only 10 decimal land would be alienated and remaining land be left towards south west for the use of common public. The learned counsel further argued that the petitioners are landless persons and belonging to EBC category but their pleas have been wrongly rejected by both the Courts below which is illegal and against the principle of natural justice. He also argued that once some area of land was left out as Rasta then there was no occasion for the Court below to reject the petitioner's appeal. He

also submitted that the learned A.C. Siwan without there being any positive and cogent documentary evidence on record of Land Encroachment case No. 05/06-07 had erred in holding that there is no necessity in passing any operative order in Land Settlement Appeal No. 12/2005-06. The learned counsel lastly submitted that as the impugned order is illegal and without jurisdiction, the same is fit to be set aside. ;

The learned senior counsel appearing on behalf of the private respondent vehemently opposed the submissions forwarded by the learned counsel for the petitioners and submitted that the land being recorded in khatiyas as Gair Mazurwa Malik parti kadim the said land can not be settled to anyone as the same is being used by common public as Rasta. He further submitted that an Encroachment case was also initiated in the past for vacating the said land. He also said that the impugned order is just, proper and valid having no illegality, as such the same is fit to be upheld.

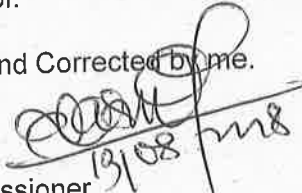
The learned G.P. said that the said land is recorded in the record of right as Gair Muzurwa Malik Parti kadim and the same being used as Rasta by the common public so the said land can not be settled to anyone. He also submitted that an Encroachment case No. 05/2006-07 was also initiated by the authorities for vacating the said disputed land. He lastly said that as the impugned order is valid and proper, no interference is required from this Court and the impugned order 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, the learned Govt. pleader and on perusal of the impugned order, it is seen that in the instant case the only question remains to be decided as to whether the impugned order passed by learned Addl. Collector, Siwan with respect to rejection of the prayer of the petitioners for settlement of Gair Mazurwa Malik parti Kadim land is legally valid or not. The claim of the petitioners is that since the said land was orally settled to their ancestors by the Ex-landlord and on being satisfied with their service and they have been coming in possession since then, the said land legally be settled to them. The claim of the private respondents are that since the said land being used as Rasta by common people as well as by students for going to temple and school situated in the vicinity, the same can not be settled to anyone else. The claim of the appellants is that initially a recommendation was made for settlement of the said land in favour of the appellants but the learned SDO without making any independent spot inquiry rejected the said claim which is legally incorrect. His other contention is that once an agreement between the parties reached after measurement of the said land, the Addl. Collector should not have rejected the claim of the appellants without examining the whole issue. I find some substance in the said claim of the appellants. In fact, the real ground situation existing on the disputed land ought to have been verified by the Addl. Collector himself before passing the order in the instant case so that injustice might not have been done to the appellants.

For the aforementioned reasons, the impugned order passed by Addl. Collector, Gopalganj is set aside and the case is remitted back for passing a fresh order in accordance with law after making spot inquiry by himself to ascertain the real situation existing on the spot.

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

Dictated and Corrected by me.

  
13/08/08  
Commissioner  
Saran Division, Chapra.

  
13/08/08  
Commissioner  
Saran Division, Chapra.