

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 307/2012

Ramashish Ram³⁴⁶

Vrs.

Chabila Chaudhary & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR Case No. 81/2012-13 on 05.11.2012.

The brief facts of the case are that the present appellant Ramashish Ram S/o Birta Ram, R/o vill-Lakthaha, P.S.-Bhore, Dist-Gopalganj filed a case before DCLR, Hathua under the provision of BLDR Act-2009 and in the said case the present respondents were made as o.ps and later on one Kamlesh Kumar Singh, Head master of Navsirjit Primary School, Lakthaha was also made as party. In the said case the petitioner sought relief that out of 75 decimal land of khata No. 04, plot No. 275 which was allotted to his grand father Raghuni Harizan by the Bihar Bhoodan Yagna Committee, Gopalganj and coming in their possession over that. Further prayer was that from which some parts of the said land has been forcibly captured. As such encroachment be removed. Thereafter, the learned DCLR after hearing the case finally vide dt. 05.11.2012 dismissed the said case. 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 submitted that the impugned order is legally and factually not sustainable as the reasons for rejecting the petition of the appellant given by the competent authority is neither legal nor valid. The learned counsel further dealing with the facts of the case submitted that the total area of plot No. 235 of khata No. 04, is 1 acre 31 decimal and situated in village Lakthaha stands recorded as Gair Mazurwa Malik land and the said land was donated to the Bihar Bhoodan Yagna Committee by the Ex-land lord, Hatharwa Raj. He further argued that later on Bhoodan Yagna Committee donated the 75 decimal land of the said plot to the Grand father of the appellant, Raghuni Harizan in the year 1959 and put him in possession. After the death of Raghuni Harizan his only son Birta Ram inherited the said property and after the death of Birta Ram, his three sons came in possession. He further submitted that as the respondents have encroached some part of the said land, the appellant approached the competent authority DCLR for removal of encroachment, the learned DCLR despite after holding that the appellant and some others have been donated land from the said plot by Bhoodan Committee, he dismissed the case. The learned counsel further submitted that as the appellant has been dispossessed illegally and due to this many criminal cases were instituted by both parties. The learned counsel further submitted that in the past the said land was measured by Anchal Amin and the said report as well as Bhoodan certificate has been brought on record. The learned counsel further submitted that the claim of the respondents are based on Sadda Patta of the year 1930 issued by Hathua Raj is totally forged and fabricated. The learned counsel lastly submitted that as the appellant is a bonafide Bhoodan settlee/allotee his interest needs to be protected and this case is also maintainable under the BLDR Act and further as the impugned order is illegal, the same is fit to be set aside.

The learned counsel appearing for respondent No. 1-4 at the very beginning of his argument submitted that the appeal petition is legally and factually not maintainable. He further said that the appellant approached the competent authority on entirely false and concocted allegations on the basis of forged and fabricated documents as such his case has rightly been dismissed by the DCLR. He also strongly refuted the claim of the appellant by saying that Maharaja of Hathua Raj never donated even an inch of land from the said plot then there is no question of any 75 decimal land is given to Bhoodan Yagna Committee nor the same

was settled to Raghuni Harizan. He also said that neither Raghuni Ram nor his son or his grand son has mutated the said land and even they are not paying any rent as such the claim is false. The learned counsel further submitted that actually the said land i.e. 5 katha was settled to one Sugriv Ahir, father of the respondent No.1, by the Ex-landlord in the year 1930 after taking nazarana and also put his possession and since then they have been coming in possession. He lastly said that the order passed by learned DCLR is based on sound principle of law and the same is fit to be confirmed.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the contesting parties and on perusal of the impugned order, it is seen that in the instant case, dispute between the parties relates to their respective possession over the disputed areas of the land which is recorded in khatiyan as Gair Mazurwa Malik land. The claim of the appellant is that from the said land 75 decimal of land was settled to his grand father by the Bhoodan Yagna Committee as the said land whose total area 1 acre 31 decimal was donated to the Bhoodan Committee by the EX-landlord of Hathua Estate. His further claim is that part of the said allotted land, some area have been illegally encroached by the respondents as such he approached the learned DCLR for removal of the encroachment but the learned DCLR instead of ordering for removal of encroachment dismissed his case for non-creation of jamabandi with respect to the said land inspite of having Bhoodan certificate and even held so by the Anchal Amin in his report. On the other hand, the claim of the respondent is that 5 katha of land was settled to his father by the Ex-landlord after taking Nazarana in the year 1930 and since then they have been coming in possession by constructing residential house thereupon. Moreover, it is seen that the learned DCLR without considering the relevant documentary evidence available with him like Bhoodan Parman Patra and measurement report of Anchal Amin has dismissed the case. Obviously the learned DCLR should not have arrived at his such findings that the claim of the appellant is not valid as no jamabandi has been obtained by him nor rent has been fixed with respect to the said land. In fact, it is the Bhoodan certificate, which is on strong evidence in favour of appellant so long as the said certificate is not declared as forged and fabricated. The learned DCLR needs to verify the genuineness of the said Bhoodan Parman Patra first as well as the claim of the appellant vis-a-vis the claim of the respondents regarding their possession before arriving at the final findings of fact in the present case so far as claim of the appellant is concerned.

For the aforesaid reasons, the impugned order of DCLR, Hathua can not be upheld and as such the same is set aside. The case is remitted back to the DCLR, Hathua for fresh consideration and to pass fresh order in accordance with law after verifying the Bhoodan certificate and also after hearing the parties.

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

Dictated and Corrected by me

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.