In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 205/2015

Ram Bachan Prasad

Vrs.

Gita Devi

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 04/2015-16 on 06.07.2015.

The brief facts of the case are that the present respondent Gita Devi W/o Prem Prasad R/o Vill-Sohagpur, P.S.& Circle-Hathua, Dist-Gopalganj filed a case before DCLR Hathua in which the present appellant, alongwith some others, was made as o.ps. In the said case, the petitioner (present respondent) sought relief to the extent that the land in question measuring 10 decimal of khata No. 376, plot No. 1830, situated in Mouza Sohagpur has been acquired by her through settlement on which funds have been released for construction of house under IAY Scheme. Her further case was that as the o.ps obstructed in construction work, they be restrained from doing so and she should be also protected in her peaceful possession. Thereafter, the learned DCLR, heard the case and finally vide order dt. 06.07.2015 and allowed 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 while assailing the impugned order, submitted that the said order has been passed without application of judicial mind. The learned counsel further submitted that the total area of the disputed land is 4 katha 17 dhur which was settled by the Hathua Estate in favour of the ancestor of the present appellant on 04.06.1935 and since then the appellants have their absolute possession thereon and in support of this contention he also filed certified copy of the extract of khatiyan. He also submitted that the respondent is not an eligible settlee because the land is question never remained in possession of the respondent. The learned counsel further submitted that the respondent has wrongly got settlement of 10 decimal of land in collusion with the staff of circle office, Hathua as such the said settlement can not be held as legal and also for the reason that the said land has never came in her possession even after the settlement in the year 2011-12. He lastly submitted that as the claim of the respondent is totally based on false ground and even the learned DCLR, without going into the relevant facts of the case passed the impugned order, the said order needs to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant, submitted that the learned DCLR has passed a legal and valid order having no scope of any interference from this Court. He further said that the land in question has been settled to the respondent after enquiry and the respondent has got sanctioned a house under IAY Scheme over the said land and the appellant does not have any legal right to make any obstruction in her peaceful possession as after settlement, the respondent has become the protected raiyat of the state. He further submitted that the said land was actually belonged to Hathua Estate and after vesting of Zamindari the said land became Govt. land as no return was filed by the Ex-landlord regarding any kind of settlement made to any person through Patta earlier. The learned counsel also stated that the claim of the appellant is mainly based on the entry made in khatiyan and his said claim can not be accepted now in absence of any reliable documents regarding settlement. He lastly said that as the impugned order is just and proper and the same

has been passed after considering whole facts of the case, the said 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 and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties basically relates to their alleged claim of possession over the land which has been recorded in the khatiyan as Gair Mazurwa Malik land. The claim of the appellant is based on the ground that the said land was settled to his ancestor through patta in the year 1935 by the Hathua Estate and the said land is still in his possession having his house situated thereon. On the other hand, the claim of the respondent rests on the fact that the said land being Gair Mazurwa Malik land, vested in the state as no return was filed by the landlord regarding any settlement and subsequently the said land was settled in her favour by the Govt. and jamabandi has also been sanctioned. Besides this he also said that even a house under IAY Scheme has been sanctioned over the said land. Thus, from the aforementioned position it appears that the claim of the appellant is only on the basis of so called entry in the khatiyan whereas the claim of the respondent is on the basis of settlement made by Govt. in the year 2010-11. However, it is important to note that the said disputed land is recorded in khatiyan as Gair Mazurwa Malik having Dih basgit nature and the same was settled to the ancestors of the appellants by the Ex-landlord in the year-1935. Although, the learned DCLR has held that the said land vested in the state after abolition of Zamindari but how he arrieved at his said conclusion for the land which is Dih-basgit land shown so in the khatiyan and even the appellant's house is also situated over that at present. It is also important to be noted here that how the authorities below without going into whole facts of the case as well without ascertaining the relevant papers of the parties declared the said land to be govt. land and allotted the same to some one else and also sanctioned a house under IAY Scheme. It appears that the authorities below have taken a very casual approach before declaring the said land to be govt. land and even the learned DCLR dit not bother to go into relevant facts of the case properly while holding the same view.

For the aforementioned reasons, the impugned order of DCLR is set aside and the case is remitted back to the DCLR, Hathua to pass afresh order in accordance with law after verifying himself all the relevant documents of the parties and also keeping in view the recent circular of the deptt. of Revenue & Land Reforms, Govt. of Bihar, Patna issued in this regard and also give opportunity of hearing to the parties.

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

Dictated and Corrected by me.

14/10/2017

Commissioner
Saran Division, Chapra.

14/10/2017

Commissioner
Saran Division, Chapra.