

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 195/2013
Rameshwar Singh
Vrs.
Arvind Kumar Singh & ors.
ORDER

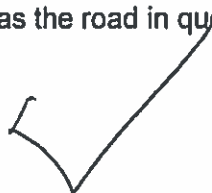
The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 221/2012-13 on 20.06.2013.

The brief facts of the case are that the present respondent Arvind Kumar, S/o Dhooth Nath Singh R/o Vill-Jagatpur Nagbanshi Tola, Circle-Lakadinabiganj, P.S.-Basantpur, Dist-Siwan filed a case before DCLR, Maharajganj in which the present appellant and some others of the same village were made as o.ps. In the said case the prayer of the petitioner (present respondent) was that the disputed piece of land measuring 2 katha 3 dhur of khata No.740, R.S. plot No. 6670 is recorded in the R.S. khatiyan as Gair Mazurwa Aam Sadak and the same is being used as road for movement and the present appellant and some others (o.ps before DCLR) have captured some part of the said land and even constructed their house thereupon due to which inconvenience has been caused to general public as such after measurement by Anchal Amin the encroachment be removed. This led to initiation of the case under the BLDR Act-2009 and finally vide order dt. 20.06.2013, the said case was disposed of with a direction to local C.O. to remove encroachment by initiating an encroachment proceeding. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant at the very outset of his argument assailed the impugned order by saying that the said order is illegal and against the weight of evidence on record. He further argued that the learned DCLR has no jurisdiction to cancel the entry in Revenue record with relation to R.S. khata No. 740, R.S. plot No. 6670 covering an area of 2 katha 3 dhur, without availing the provision of Land Reforms Act. He further pointed out that the learned DCLR has failed to take into consideration that the respondent had failed to implead State of Bihar through the D.M. Siwan as land in question is Gair Mazurwa Aam and hence State of Bihar is a necessary party to the case. He further argued in detail as to how the said land came in possession of the appellant through sale deed executed by the settlee of the Ex-landlord. The learned counsel lastly said that as the impugned is against the facts of the case, the said order can not be upheld and fit to be set aside and in turn this appeal petition be allowed.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant submitted that the grounds of appeal as framed and filed is not maintainable and liable to be rejected. He further submitted that the appellant has neither title nor legal possession nor any legal right to possess the road in question as the road in question is for the use



of general public and the same is public property. The learned counsel further submitted that the Ex-landlord was not entitled to settle the land in question to any body which has been used as road by general public as such the claim of appellant that he came to acquire the said land through sale deed and exchange having no legal validity. He lastly said that the learned lower Court has rightly held that the appellant has encroached the Gair Mazurwa Aam Rasta and the appellant has been directed to vacant the same and for that purpose C.O. has been directed to initiate proceeding.

Considering the facts and circumstances of the case, material available on records, claim and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case dispute between the parties relates to a piece of land which has been recorded in R.S. khatiyan as Gair Mazurwa Aam Rasta. However, the claim of the appellant is that the said land was settled by Ex-landlord to some one else from whom he got by purchase through registered sale deed. On the other hand the claim of the respondent is that the said land could not have been settled as per the entry made in the R.S. khatiyan about the type of land and its nature. It is seen that the learned DCLR has held the said land as public land and encroachment made thereupon as illegal and for that he ordered for removal of the same. I do not find any illegality in the said impugned order. In fact, Gair Mazurwa Aam Rasta exclusively vested in the state after the abolition of Zamindari.

For the aforesaid reasons, the impugned order is upheld and this appeal petition being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.


Commissioner 16/9/2017
Saran Division, Chapra.


16/9/2017
Commissioner
Saran Division, Chapra.