

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 243/2015**

**Baliram Mishra**

**Vrs.**

**Dadan Mishra & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed DCLR, Hathua in Land Dispute case No. 100/2012-13. On 27.08.15.

The brief facts of the case are that Baliram Mishra S/o Late Kamala Mishra R/o Vill-Penula Mishra, P.S.-Fulwariay, Dist-Gopalganj had filed a case before DCLR vide बिहार भूमि विवाद निराकरण बेदखली वाद सं०-100/2012-13 in which the present respondent was made as o.p. The said case was dismissed by the learned DCLR vide order dt. 09.11.2012. Feeling aggrieved by the said order, the present appellant preferred BLDR Appeal No. 333/2012 before this Court. This Court was pleased to remit the case back to the DCLR vide order dt. 30.11.2014. The relevant portion of the said remand order reads thus:

" I remit the matter back to the learned DCLR to look into afresh in this matter and examine from the revenue records and hear the concerned parties including chairman, Bhoodan Yogna Committee and his allottee Surendra Mishra. Furthermore the DCLR, Hathua is directed to go through the recent Resolution of the deptt. Issued by Principal Secretary, Revenue and Land Reforms, Deptt. Govt. of Bihar, Patna bearing No. 925 dt. 11.11.2004 in this regard and pass appropriate order as he thinks fit and proper expeditiously after hearing all concerned".

In compliance to the aforementioned direction of this Court the case was again taken up and after issuing notices to the party and after hearing them, the said case has been dismissed by the learned DCLR vide order dt. 27.08.2015. This led to coming up of this fresh appeal case filed by the appellant wherein the order dt. 27.08.2015 passed by leaned DCLR is under challenge.

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 considering the relevant documents of the appellant as well as observations made by this Court in its remand order passed earlier. He further said that in view of the illegality committed by the learned DCLR, while passing the said order, the same becomes arbitrary and illegal and fit to be set aside. He further submitted that the learned DCLR did not consider the fact that Hathua Raj has settled area 5 katha towards east out of 15 kathas land in plot No. 432 in which house and Bathan of appellant are existing and respondent is a stranger has forcibly dispossessed the appellant from the area of 3 kathas 13 dhur towards north. He further argued that the respondents claim is totally baseless so far his claim that he is in possession on behalf of Surendra Mishra. He also said that the learned Court wrongly held that the land in question is of Bhoodan land and same has been given by Hathua Raj to Bhoodan Yogna Committee in 1970-71 but the fact is that the said land was settled with ancestor of the appellant by the Hathua State in the year 1930. It is also argued on behalf of the appellant that the

learned Court of DCLR ought to have considered that parcha in favour of Savitri Devi has been granted during pendency of this case before this Court and in fact Bhoodan Committee has no power to settle the land of this appellant to Savitri Devi. He also strongly submitted that this important fact that Surendra Mishra has no power to give this land either to Dadan Mishra or Savitri Devi. The learned counsel lastly said that as the impugned order suffering from the vice of arbitrariness, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent, strongly, opposed the arguments forwarded by the learned counsel for the appellant and submitted that the impugned order is just and proper and the same is fit to be upheld. He further submitted that the present appeal is not legally maintainable due to mis-joinder of parties. The learned counsel further submitted that the appellant's dispute relates to complicated question of title which can not be adjudicated in the summary proceeding and the appellant should have invoked Civil Court proceeding in order to settle his grievances. He also said that a Title suit No. 1469/15 has already been filed before Sub-judge-1 in Gopalganj by respondent No.3. The learned counsel further said that the learned lower Court has rightly observed that the jamabandi standing in the name of appellant's father is illegal and collusive and he is not the settlee of Bhoodan Yagna Committee. He further said that as per the provision of Bhoodan Yagna Committee, the person aggrieved by the order of confirmation should file Civil suit to establish his right and title within six months and the appellant has chosen a wrong forum. He lastly submitted that as the matter has been finally decided by the learned Court below, this appeal petition, having no merit is fit to be dismissed.

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 the dispute between the parties relates to their respective claim over the disputed land. The claim of the appellant is that the proprietor of Hathua Estate had settled the land in question in favour of father of the appellant in the year 1930, much before the vesting of Zamindari whereas the claim of the respondent is that the Ex-landlord, Hathua Estate donated the said land to the Bihar Bhoodan Yagna Committee and subsequently the said land was settled to Surendra Mishra and later on to Savitri Devi. Obviously, the claim of the parties revolve around the way through which the said land came in their possession and also the legal validity of the said claim. However, it is an admitted fact that the land was recorded as Gair Mazurwa Malik land in R.S. Khatiyon but the said land stated to have been donated to the Bhoodan Yagna Committee who in turn settled to the respondent lateron. It is also seen that the learned DCLR has considered the matter in detail before arriving at the final findings of fact. The relevant portion of the said order reads thus:

“उभय पक्ष के विद्वान अधिवक्ता का बहस सुनने, प्रस्तुत दस्तावेजी साक्ष्यों के अवलोकन से स्पष्ट है कि प्रश्नगत जमीन गैर गजरुआ मालिक है। जमींदारी उन्मूलन के समय किसी भी व्यक्ति के पक्ष में भूतपूर्व जमींदार द्वारा किसी प्रकार का अंतिम भेस्टिंग रिटर्न दाखिल किए जाने का कोई साक्ष्य प्राप्त नहीं है। बिहार भूमि सुधार अधिनियम-1950 के अनुसार किसी भूतपूर्व जमींदार द्वारा किसी जमीन का किसी रैयत के पक्ष में दिया गया नजराना पट्टा या बंदोवस्ती तभी विधि मान्य हो सकता है जब उसके पक्ष में भूतपूर्व जमींदार ने जमींदारी उन्मूलन के समय बिहार सरकार को अंतिम भेस्टिंग रिटर्न दाखिल किया है। वादी द्वारा दाखिल जमीन के मागले में ऐसा कोई साक्ष्य प्राप्त नहीं है। अनुमंडल कार्यालय में संरक्षित भूदान सम्पुष्टि अभिलेख तथा क्षेत्रीय पदाधिकारी-सह-कार्यालय मंत्री जिला-भूदान यज्ञ कार्यालय गोपालगंज द्वारा पत्रांक 414, दिनांक 01.08.2015

को दायित्व जवाब एवं साक्ष्य के अनुसार प्रश्नगत खाता संख्या-101, येसरा संख्या-432 की 57 डी0 जमीन भूदान सम्पुष्टि अभिलेख संख्या-99/70-71 के द्वारा बिहार भूदान यज्ञ अधिनियम-1954 की धारा-11(4) के अन्तर्गत सम्पुष्ट है। सम्पुष्टि के पश्चात् विभिन्न आदाताओं के बीच जमीन का वितरण भी किया जा चुका है। प्रश्नगत जमीन 11 डी0 जमीन सुरेन्द्र मिश्र पिता-किशुन मिश्र को 1979 में वितरित की गई थी। सुरेन्द्र मिश्र द्वारा जमीन त्याग देने के पश्चात् सावित्री देवी पति उपेन्द्र का उस जमीन पर दखल-कब्जा को देखते हुए 10 डी0 जमीन का भूदान प्रमाण पत्र निर्गत किया गया है। सावित्री देवी के पक्ष में लगान निर्धारित होकर जगाबंदी संख्या-298 कायम है। जमीन कभी भी वादी के दखल-कब्जे में नहीं रही है। उक्त जमीन से वादी को विपक्षी ने कब बेदखल किया है, उसका कोई समोचित विवरण या साक्ष्य दायित्व नहीं किया गया। स्थल पर वादी अपनी दखल की जमीन को पक्की दीवार से घेर चुके हैं। प्रतिवादी सावित्री देवी भी अपनी जमीन पर पक्की दीवार से घेर कर दखलकार है। प्रश्नगत जमीन वादी के न तो दखल-कब्जा में कभी रही है और न ही उन्हें किसी ने बेदखल किया है। ऐसे में वादी द्वारा प्रश्नगत जमीन से बेदखल होने का दावा प्रमाणित नहीं होता है।

उक्त परिपेक्ष्य में प्रस्तुत वाद को खारिज किया जाता है।”

From the above findings of the learned DCLR, it appears that although he tried his best to resolve the dispute but in the said effort he left certain important points which should have been examined and dealt with elaborately to arrive at a correct findings of fact. It is also seen that in the instant case several disputed question of facts have been raised by the learned counsel for the parties which can not be decided without considering the relevant document relates to return submitted by the Ex-landlord after vesting of Zamindari, creation of Jamabandi, donation made by the Ex-landlord to Bhoodan Yagna Committee and subsequent distribution of the said donated land to different persons and their respective possession thereon. This Court finds that the a documents available in the office of C.O./S.D.O. and in the office of Bhoodan Yagna Committee need to be inspected thoroughly to arrive at a correct findings of fact.

For the above mentioned reasons and discussion made therein, the impugned order of DCLR is set aside and the case is remitted back for fresh consideration and passing a fresh order keeping in view of the observation made above.

With the aforementioned observations and direction the instant appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner  
Saran Division, Chapra.

Commissioner  
Saran Division, Chapra.