

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA

Land Settlement Revision No..... 54/2010

Ashraf Ali & Others Petitioners

Vrs

1. State of Bihar
2. Hadis Ansari & Others..... Respondents

ORDER

31.03.13

The instant revision application is directed against the impugned order passed by Addl. Collector, Siwan on 11.11.2008 in settlement case No. 227/91-92, 162/92-93

2. The brief facts of the case are that one Hadis Ansari (OP No. 2) s/o Late Asir Mian r/o vill Baishakh PS & Anchal Pachrukhi, Dist. Siwan filed a petition before C.O. Pachrukhi regarding settlement of 2 katha 14 dhur Gair Mazurwa land out of total area 3 katha 10 dhur land appertaining to khata No 146 plot No 113, situated in the same village. Thereafter a settlement proceeding was initiated by CO, Pachrukhi vide settlement case No 11/86-87 and later on a proposal with recommendation for confirmation of the said settlement was sent to SDO, Siwan who confirmed the same vide order dt 17.7.1990. Then coming to know about the said settlement in favour of OP No. 2, the present petitioners filed an appeal bearing settlement appeal No. 227/91-92, 162/92-93 before Addl. Collector, Siwan challenging the order dt. 17.7.90 of SDO, Siwan and the Addl. Collector, Siwan by his order dt. 23.3.1993 set aside the order of SDO, Siwan and referred the case back to CO, Pachrukhi to look in to the matter and to pass order only after personal verification regarding claim of possessions of the parties. Feeling aggrieved by the said order, the present O.P No. 2 filed a settlement revision case bearing No. 2/93-94 before this Court and this Court after hearing the parties remanded the case back to Addl. Collector with certain observation and direction

Aca

vide order dt. 11.7.2000. Thereafter, the matter remained pending before Addl. Collector, Siwan and in the meanwhile O.P No. 2 filed a petition on 16.10.2008 before Addl. Collector, alleging therein that some co-villagers have encroached his land which was settled to him by CO, Pachrukhi, which led to passing of final order by Addl Collector on 11.11.2008 in the said case wherein he directed the CO, Pachrukhi to remove the encroachments from the land of O.P. No. 2. Then on coming to know about the said order through the notice dt. 2.3.2009 issued by CO, Pachrukhi, these present petitioners came before this Court in revision with a prayer for setting aside the order dt 11.11.2008 passed by Addl. Collector, Siwan

3. Heard the learned counsel for the parties and perused the records.
4. The learned counsels appearing on behalf of the petitioners submitted that initially the settlement revision case No. 2/93-94 was remanded by this Court with certain observation and also with a direction to dispose the matter within three months but the same was kept pending and lastly the order was passed on 11.11.2008. While assailing the impugned order of Addl. Collector, Siwan, the learned counsel further submitted that it is a matter of great surprise that the order of this Court dt, 14.7.2000 was sent to the learned Addl. Collector, Siwan to dispose of the Land Settlement Appeal No. 227/91-92 in the light of direction and observation made therein but what was the reason for not complying with the same for eight long years. He further submitted that it is also surprising that when a petition was filed by O.P. No. 2 on 16.1.2008 why and under what circumstances Addl. Collector, Siwan failed to give notice to these petitioners and dispose the case ex-parte within 27 days only without hearing these petitioners. He further argued that the vital infirmity and malafide intention of the Court of Addl. Collector, Siwan is clearly indicative from his own order dt 11.11.2008 that he has not mentioned a word about the order of this Court dt. 14.7.2000 which was against the earlier order of Addl. Collector, Siwan dt 23.3.1993. He also submitted that the impugned order dt 11.11.2008 is itself indicative of the truth that the same has been passed only with a motive to help the O.P No. 2 without any cogent reasons

Acer

which is bad under law. He also prayed that the order dt. 11.11.2008 of Addl. Collector, Siwan is fit to be set aside.

5. The learned counsel appearing on behalf of the O.P. No. 2 submitted that the land measuring 2 katha 14 dhur was settled with O.P. No. 2 and parcha was also issued to him and the said settlement was also confirmed by DCLR and SDO, Siwan and on that basis Jamabandi No 181 was created in his favour. He further argued that summons were issued to the parties but non of the parties appeared and it is on the persuasion of the Govt. pleader that the case was adjourned. He also submitted that it was on the request of the petitioners an advocate was sent by the Commissioner, Saran for the local inspection of the land in question who found a Khop, Hand pump, Cemented Tub and Houses etc confirming the possession of O.P No.2. The learned counsel lastly prayed for the dismissal of this revision petition.

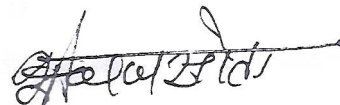
6. Considering the facts and circumstances of the case, materials available on records and respective claims advanced by the parties in contest, it is seen that two important questions fall for consideration before this Court which relate to the claim of the petitioner that the impugned order was passed ex-parte and also not a valid order in as much as the points that ought to have been considered as per the conditions set forth in remand order of this Court were not considered.

7. From the order sheets of the Addl. Collector's court records it is quite obvious that the conduct of the petitioner was not conducive as he remained conspicuously absent on several dates while the proceeding was reinitiated by Addl. Collector Siwan after remand order of this Court. So the plea of the petitioner that he was not noticed for appearance in the case, when the proceeding was initiated afresh, is not tenable. In fact the petitioner should have himself approached the court of Addl Collector Siwan as he was a contesting party in the case in appeal before Addl. Collector and in revision before this court.



8. The impugned order of Addl. Collector Siwan is also not completely free from the vice of arbitrariness as there is no discussion about the findings on those specific points which were raised in the direction of this Court in remand order. Instead the order was passed on the basis of fresh complaint against attempted encroachment of the land which was settled by the SDO but had been quashed by himself in his first order while the remanded case was pending for quite some time in his court. As such the impugned , cannot be sustained in the eye of law.

9. For the reason aforesaid, the impugned order of Addl. Collector Siwan dated 11.11.2008 is not sustainable, hence the same is set aside and the case is again remitted back to Addl. Collector Siwan to decide issue afresh upon consideration of all relevant facts eloquently, keeping in mind those important points for which the case was remanded back to him earlier, without any prejudice and pass a afresh order after giving opportunities of being heard to the parties.



(C.Lalsawta)

Commissioner, Saran Division, Chhapra.