

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 61/2018

Ram Bachchan Prasad & ors.

Vrs.

Geeta Devi

The instant appeal petition is directed against the impugned order dated 06.02.2018 passed in Land Dispute case No. 04/2015-16 by DCLR Hathua.

The brief facts of the case are that the present petitioner Ram Bachchan Prasad & ors had filed an appeal case vide B.L.D.R. Appeal No. 205/2015 before this Court in which the impugned order passed by DCLR, Hathua in Land Dispute case No. 04/2015-16 on 06.07.2015 was under challenge. Thereafter, this Court vide order dt. 14.09.2017 remitted the case back to the learned DCLR, Hathua to pass a fresh 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 and Land Reforms, Govt. of Bihar, Patna and also give opportunity of hearing to the parties. This led to rehearing of the case by the learned DCLR, and finally vide order dated 06.02.2018 upheld the earlier order passed in the case on 06.07.2018. The operative portion of the said order reads thus:-

“उक्त परिपेक्ष्य में वादी द्वारा दायित्व प्रस्तुत वाद को पुनः स्वीकृत किया जाता है तथा अंचल पदाधिकारी, हथुआ को आदेश दिया जाता है कि बन्दोवस्तीधारी महिला वादी गीता देवी को उसे बन्दोवस्ती से प्राप्त भूमि में इंदिरा आवास विनिर्माण करने में प्रतिवादीगण द्वारा किये जा रहे व्यवधान से वादी को सुरक्षा प्रदान की जाए। साथ ही इस वाद के दौरान प्रतिवादीगण द्वारा प्रश्नगत भूमि में जबरन खड़ी की गयी अवैध संरचना को हटवाई जाय तथा वादी की बन्दोवस्त वाली प्रश्नगत भूमि को वादी के हित में पूरी तरह सुरक्षित एवं निरापद बनाया जाय।”

Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order, submitted that the same is legally not a correct order. He further submitted that the D.C.L.R. Hathua passed the order, which is not maintainable under the BLDR Act-2009. He further argued that in the said case there was no issue with respect to adjudication of complex question of title. He also argued that the o.p. tried to capture the said disputed land. 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 khatiyān. 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. He lastly submitted that the impugned order is erroneous in law as the same is not in tune with the settled principle of law so the impugned order is fit to be set aside.


The learned counsel while opposing the arguments forwarded by the learned counsel for the appellants and supporting the impugned order, submitted that there is no illegality or irregularity in the order of learned DCLR as such the same is fit to be upheld. He also argued that the respondent while making her construction over the said land, the appellants made disturbances as such he prayed for restraining the appellant and the learned Court below has passed a very legal order after taking a practical approach to resolve the dispute as such the impugned order is fit to be upheld. The learned counsel also said that a title suit case No. 232/2018 has already been filed by the appellant in the Court of Munsif, Gopalganj. 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 khatiyā and his said claim can not be accepted now in absence of any reliable documents regarding settlement.

Considering the facts and circumstances of the case, materials available on record and pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, the dispute between the parties relates to their respective claim over the disputed land on one or another basis. In fact, it appears that the dispute between the parties relates to their respective possession over the area of the disputed land. None of the parties are either allottee or settle. In view of the recent judgement of Hon'ble High Court in CWJC No. 1091/2013 (*Maheshwar Mandal & ors Vrs The State of Bihar & ors.*), the case brought before learned DCLR was not maintainable as the dispute between the parties is purely a dispute between private parties with respect to claim over the disputed land for which right, title etc. has not been adjudicated by a competent Court or forum under any of the six acts as enumerated in BLDR Act 2009. As such the learned DCLR was not competent to deal with such kind of dispute under BLDR Act. But the learned DCLR, instead of closing the proceeding brought before him for adjudication went on to pass an order on merit.

For the aforementioned reasons, the impugned order of learned DCLR is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.


11.11.19
Commissioner
Saran Division, Chapra.


11.11.19
Commissioner
Saran Division, Chapra.