

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 141/2014

Lachhman Singh & ors.

Vrs.

Sri Ram Singh & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, maharajganj in Land Dispute Resolution case No. 138/13-14 on 25.03.14.

The brief facts of the case are that the present respondent Sri Ram Singh S/o Late Ram Kamal Singh R/o Vill-Suhpur Tola Sipar, P.S. & circle-Bhagwanpur Hat, Siwan filed a case before DCLR, Maharajganj in which present appellant's were made as o.ps. In the said case the prayer of the petitioner (present respondent) was that the land in question measuring 10 dhur of plot No. 653, khata No. 49 situated in Mouza Suhpur Tola Sipar was purchased by him through registered sale deed on 25.01.93. His further case was that as the said land was low land he started to fill the land, the present appellants (o.p. before DCLR) created obstruction as such possession over the said land be given to him after measurement and o.ps be restrained also from creating any hindrance. Thereafter, the learned DCLR, heard the case and finally vide order dt. 28.03.14 allowed the said case. Feeling aggrieved by the said order, the present appellant has approached this Court by way of filing appeal.

Heard the learned counsel for the appellant only as the learned counsel for the o.p. remained absent by filing time petition.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that in the instant case dispute relating to determination of title is involved as such the learned DCLR should not have decided such a complex issue of title of the parties. He further submitted that a T.S. case is pending before Munsif, Siwan and as such, the learned DCLR should have directed the parties to seek remedies before competent Civil Court. He lastly said that the learned DCLR ignoring the decision given in the case of Maheshwar Mandal has passed the order beyond his jurisdiction so his order is fit to be set aside.

Considering the facts and circumstances of the case, material available on records pleadings advanced by the learned counsel for the appellant and on perusal of the impugned order, it is seen that the present respondent, as petitioner, has approached the competent authority under the provision of the BLDR act-2009 seeking relief to the extent that the disputed land purchased by him through registered sale deed over which the o.ps (present appellants) are creating obstruction in his possession as such his possession be removed by measurement of the said land. Thus, it appears that the petitioner had never sought any relief that his title over the said land be declared. The claim of the present appellant is that in the instant case adjudication of complex question of title is involved as such the learned DCLR was not competent to pass any order beyond jurisdiction. This claim of the appellant's counsel is not fit to be accepted in view of the findings arrived at by the learned DCLR. The concluding paras of learned DCLR order reads thus:-

“ उभय पक्षों को उनके विद्वान अधिवक्ताओं के माध्यम से सुना तथा अभिलेख पर उपलब्ध दस्तावेजों का अवलोकन किया। इससे स्पष्ट होता है कि यह उभय पक्ष मानते हैं कि प्रश्नगत भूखण्ड खाता नं०-49 सर्वे नं०-653

रकबा 10 धुर लक्ष्मण सिंह वो दयाशंकर सिंह की भूमि थी जिसे की उन्होंने आवेदक को 25.01.93 को 2000 रुपये में बैनामा कर दिया। इस बैनामा के आधार पर आवेदक की जमाबंदी कायम है तथा अद्यतन लगान रसीद प्राप्त है विपक्षीगण दावा करते हैं कि आवेदक ने जाल फरेब कर उक्त बैनामा करवा लिया था। परन्तु वर्ष 1993 में 20 वर्षों से ज्यादा समय तक उन्होंने उक्त बैनामा को निरस्त कराने का कोई प्रयास नहीं किया है। इस वाद के संबंध में विपक्षीगण को 05.01.14 को नोटिस का तामिला कराया गया और वे दिनांक 23.01.14 को अपने अधिवक्ता के माध्यम से उपस्थित हुए और इसके बाद वे 10.02.14 को व्यवहार न्यायालय में स्वत्व वाद दायर कर दिया। चूंकि जब पूर्व में बिहार भूमि विवाद निराकरण अधिनियम के तहत यह वाद इस न्यायालय में सुनवाई हेतु प्रक्रियाधीन थी तो ऐसे में विपक्षीगण को व्यवहार न्यायालय जाने का कोई औचित्य नहीं दिखता है। अतः प्रश्नगत भूखण्ड खाता नं०-49 सर्वे नं०-653 रकबा 10 धुर पर आवेदक का दावा उनको बैनामा के आधार पर संपुष्ट होता है और विपक्षी बिना किसी आधार के आवेदक को तंग परेशान किये हैं। अतः आवेदक के आवेदन को खर्चा सहित स्वीकृत किया जाता है और विपक्षीगण को प्रश्नगत भूखण्ड पर व्यवधान पैदा करने से रोक लगायी जाती है।”

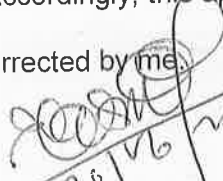
From above findings of learned DCLR, it appears that in the instant case the dispute between the parties relates to adjudication of complex question of title and possession over the disputed land. Obviously adjudication of such a complex issue has been kept outside the purview of BLDR Act-2009 as envisaged in section 4(5) of the said act. It is seen that the learned DCLR overlooking the said provision of the act went on to decide the issue by holding that the claim of present respondent is confirmed. In fact, the learned DCLR should not have dealt with such a complex issue relating to determination of title and the relevant provision of the act also forbids him from doing so.

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

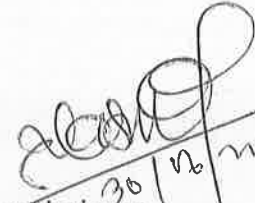
Accordingly, this appeal case is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.


30/1/18

Commissioner
Saran Division, Chapra.


30/1/18