

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal case No. 50/2015

Sri Ram Bhagat & ors.

Vrs.

Manan Prasad Srivastva

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 61/256/2014-15 on 23.01.2015.

The brief facts of the case are that the present respondent Manan Prasad Srivastva and Raghav Prasad Srivastva, both sons of Late Gorakh Prasad Srivastva, R/o Tardwa Parsia, Circle-Darauli, Dist-Siwan filed a case before DCLR, Siwan Sadar, under the provision of Bihar Land Dispute Resolution Act-2009. In the said case the relief sought for by the present respondents (petitioner's before DCLR) was that the land in question measuring 20 kadi width towards north side in plot No. 1038, khata No. 115, having total area 4 katha situated in Mouza Tarwa Parsia and belongs to their ancestor has been forcibly encroachment by the o.ps (present appellant) as such the said land be vacated after measurement. Thereafter, the learned DCLR after hearing the case, finally vide order dt. 23.01.2015 allowed the said case and accordingly ordered for removal of the alleged encroachment after measurement. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that in the instant case dispute between the parties relates to title issue as such the order passed by the learned DCLR is not of jurisdiction. He further argued that the appellant has not encroached any land rather the land alleged to have been encroached is actually came to the appellant through exchange about 45-46 years ago between the ancestors of the parties. He also argued that as the said exchange was an oral exchange, the respondent now wants to extinguish the same. He lastly said that as the impugned DCLR has passed the order against the judgement passed by Hon'ble High Court in the case of Maheshwar mandal & ors. vrs The State of Bihar & ors.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments made by the learned counsel for the appellant and said that the appellant as o.p. before DCLR failed to place any documentary evidences regarding the so called exchange of land. The learned counsel also said that even before this Court also the appellant has failed to brought to any paper regarding alleged exchanged. He also argued that the impugned order of learned DCLR is just proper and valid as such the same is fit to be upheld and the present appeal petition lacking merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records pleadings forwarded 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 20 kadi wide land towards north side in plot No. 1038. The claim of the appellant the said land came to him after exchange between the father of the appellant and respondent about 45 year ago as such the claim of the respondent that the said land has been under encroachment is totally

unfounded. On the other hand, the claim of the respondents are that the said land is part of 4 katha area of plot No. 1038 and as the appellants have forcibly captured the same he filed case before DCLR for remove of the said possession. It is also seen that neither of the parties are allottee or settlee and nor their case falls under any of the act mentioned in schedule-1 of the BLDR Act. In fact dispute pertain to raiyati land. Obviously the learned DCLR should not have entertained the case under the BLDR Act. However, it is seen that he went on to pass the impugned order. The relevant portion of the said order is as follows:-

“उभय पक्ष की सुनवाई एवं अभिलेख कागजातों का अवलोकन किया गया। विवादित खेसरा संख्या-1038 में जानिव उत्तर 20 कड़ी चौड़ा तथा पूरी लम्बाई के अतिक्रमण करने का आरोप विपक्षीयण पर लगाते हुए मुक्त कराने हेतु आवेदकगण द्वारा वाद दायर किया गया है। जबकि विपक्षीयण का कहना है कि उनके पिता एवं आवेदकगण के पिता द्वारा खेसरा नं० 1721 में खरीदगी भूमि में का 6 धुर के बदले विवादित खेसरे में 1 कट्टा भूमि आपस में बदलने के अनुसार विवादित भूमि पर उनलोगों का दखल कब्जा है। परन्तु विपक्षीयण द्वारा बदलने से संबंधित कोई दस्तावेजी/प्रमाणित साक्ष्य दाखिल नहीं किया गया है, जिससे की उनके कथन की पुष्टि हो सके। चूंकि विवादित खेसरे की भूमि आवेदकगण की पैतृक भूमि है, जिसकी मापी कर अतिक्रमण हटाने हेतु आवेदकगण द्वारा वाद दायर किया गया है। अतः वाद स्वीकृत करते हुए अंचलाधिकारी को निदेश दिया जाता है कि वे विवादित खेसरे एवं खेसरा नं०-1037 की मापी कर बीच में डडार को निहित कर अतिक्रमित भूमि मुक्त करावे।”

Thus, it appears that the learned DCLR has passed the order against the provision of the said act as such the impugned order is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.