

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

**B.L.D.R. Appeal No. 112/2011**

**Harish Chandra Kurmi**

**Vrs.**

**Ranjeet Kumar Patel**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua on 22.07.2011 in case bearing title बेदखली वाद सं०-०३/२०११-१२ and dealt with under the provision of BLDR Act-2009.

The brief facts of the case are that the present respondent of the instant appeal case Ranjeet Kumar Patel S/o Late Kauleshwar Kurmi, R/o Vill-Bhudeya Bori, P.S.-Kateya, Dist-Gopalganj filed a dispossession case No. 03/2011-12 before DCLR in which the present appellant was made as o.p. In the said case the relief sought for by the present petitioner that the chakbandi plot No. 145 and 147 which was prepared for the land purchased by his father and uncle, out of which the present appellant (o.p. before DCLR) had constructed his house over 5 ½ decimal of land of both plot by dispossessing him as such his possession be recovered. Thereafter, the learned DCLR after issuance of notice to the o.p. finally heard the case and allowed the same in favour of the present respondent (petitioner before DCLR) and furthermore, directed the C.O. Kateya to get measured the land in question in his presence vide order dt. 12.02.2011. Feeling aggrievedly and dissatisfied with the aforesaid order, the present appellant has approached this Court in appeal.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance on previous date.

The learned counsel appearing on behalf of the appellant and submitted that the impugned order is erroneous and illegal because the said order has been passed without considering the relevant facts and law involved in the case. He further argued that the learned lower Court ought to have held that in absence of preparation of registers of land and in absence of preparation of statement of principle and in absence of final publication of registers of land as provided in consolidation of holding Act the case of the respondent was not maintainable. He also submitted that the learned lower Court has erred in not considering the fact that there is Indira Awas on the disputed land and also erred in passing the impugned order without hearing the Govt. authority. He further argued that the learned lower Court ought to have held that the case instituted before him involves complex question of adjudication of title and as such the learned DCLR to have left it to parties to seek remedies before the competent civil Court. He also submitted that the learned lower Court has erred in already adverse inference against the present appellant in absence of any material on record. He lastly pleaded that as the impugned order is illegal and erroneous the same is fit to be set aside.

Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order it appears that in the instant case the dispute between the parties relates to their respective claim over the land following the consolidation of the land belonging to their ancestor. It is also seen that the learned DCLR after careful consideration of the relevant facts of the case arrived at his final findings of fact relating to claim of the parties. The relevant portion of the order reads thus:-



"उभय पक्षों के विद्वान अधिवक्ताओं के बहस का सुनने एवं अभिलेख में उपलब्ध कागजातों का अवलोकन करने के उपरान्त में पता हूँ कि वास्तव में प्रश्नगत जमीन का चकबंदी खतियान वो नक्सा आवेदक के पिता वो चाचा के नाम से तैयार हो चुका है। विपक्षी ने भी अपने जबाब में कहा है कि आवेदक के चाचा ने विपक्षी का नाम चकबंदी खतियान में नहीं चढवाया है। अगर वास्तव में प्रश्नगत जमीन पर विपक्षी का अधिकार वो दखल कब्जा होता तो निश्चित रूप से विपक्षी के द्वारा चकबंदी पदाधिकारी के आदेश के खिलाफ अपील दायर किया गया होता। विपक्षी ने अपने जबाब में प्रश्नगत खेसरा नं०-179 के संबंध में कोई उल्लेख नहीं किया है जिसका चकबंदी में खेसरा नं०-147 तैयार हुआ है। इससे साबित होता है कि चकबंदी खेसरा नं०-147 के किसी भी अंश पर विपक्षी को कोई अधिकार नहीं है। विपक्षी के कथन से यह भी स्पष्ट होता है कि प्रश्नगत जमीन के लिखत विपक्षी का नाम चकबंदी के खतियान में दर्ज नहीं हुआ है, इससे स्पष्ट हो जाता है कि प्रश्नगत जमीन पर आवेदक का अधिकार है जिससे किसी भी अंश को दखल करने का विपक्षी को कोई अधिकार नहीं है। अतः उपरोक्त तथ्यों के आधार पर आवेदक के इस मोकदमा को स्वीकृत किया जाता है तथा विपक्षी को आदेश दिया जाता है कि इस आदेश के पारित होने की तिथि से पन्द्रह दिनों के अन्दर प्रश्नगत जमीन से अपना दखल कब्जा हटा कर आवेदक को दखल कब्जा दे दें। साथ ही अंचल पदाधिकारी कटेया को निदेश दिया जाता है कि अपनी उपस्थिति में प्रश्नगत जमीन की पैमाइश करवाकर सीमांकन करवा दें ताकि कोई विवाद उत्पन्न नहीं हो। "

The learned counsel is of the view that in the instant case involves determination of the complex question of title of the parties but from the impugned order it is quite obvious that neither the petitioner before DCLR had sought any relief for that nor the DCLR had decided the title.

For the abovementioned reasons, the impugned order is upheld and this appeal being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.

Commissioner  
Saran Division, Chapra.

Commissioner  
Saran Division, Chapra.