

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 290/2012

Chandrawati Devi & ors.

Vrs

Shatrughan Prasad

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 48/2010-11 on 26.09.2012.

The brief facts of the case are that a case bearing No. 48/2010-11 was initiated by learned DCLR, Maharajganj pursuant to direction received from Public Grievances Cell, Siwan. In the said case, the present respondent Shatrughan Prasad S/o Late Hira Lal Sah R/o Vill-Basantpur, Dist-Siwan was the petitioner and present appellants were respondents. In the said case the prayer of the petitioner before DCLR was that a piece of land measuring 10 dhur was his purchased land, having plot No. 928 and 982, khata No. 128 over which the o.ps (present appellants) were trying to capture the same with the help of some antisocial elements and further more on the 4.5 dhur land of northern side over which Chandrawati Devi has constructed boundary wall as such the same be demolished and his possession be delivered. Thereafter, the learned DCLR after issuing notices to the o.ps, heard the case and finally vide order dt. 26.09.2012 ordered for demolition of the said boundary wall and also restrained the o.ps from moving over the said disputed land. Feeling aggrieved by the said order the present appellants (o.ps before DCLR) have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

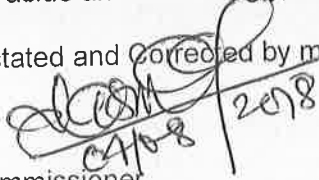
The learned counsel appearing on behalf of the appellants at the very outset of his argument submitted that the impugned order is without jurisdiction for the reason that the learned DCLR did not consider the fact that the subject matter of the case is adjudication of complex question of title and possession. As such the learned DCLR was not competent to adjudicate such complex issue under the provisions of BLDR Act. He further submitted in detail as to how the appellants came to possession over the said disputed land and furthermore, how the claim of the respondent was not legally maintainable. He also argued that the learned Court below failed to discuss the various points raised by the appellants as o.ps and on this ground also the impugned order is not valid. He also submitted that the respondent has got neither title nor possession over the land claimed by him but he on the basis of baseless fact got the proceeding initiated by filing a simple petition in Janta Darbar of D.M. Saran. He lastly said that as in the instant case dispute relates to title of the parties the same can not be resolved under the provisions of BLDR Act as such the impugned order is fit to be set aside.

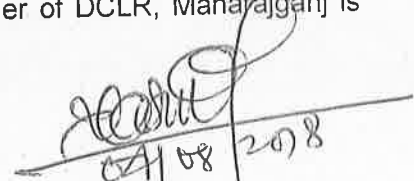
The learned counsel appearing on behalf of the respondents on the other hand strongly opposed the arguments forwarded by the learned counsel for the appellant so far his claim that in the instant case involves determination of complex question of title and possession of the parties. He further argued that the said land belongs to the respondent and the learned DCLR after considering all the facts and merit of the claim has finally passed the order which is justified and proper. He also contended that if the appellants have any grievances with regard to title of the respondent over the said disputed land then they may approach the competent Civil Court. He lastly said that as the impugned order is legally valid the same is fit to be upheld and this appeal petition lacking merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records arguments forwarded by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim over the land in question on one or another basis. The claim of the appellants is that the case brought before learned DCLR was not maintainable in view of the fact that in the instant case involved adjudication of complex question of title and possession. On the other hand, the respondent contradicts the said claim on the ground that in the said case no question regarding determination of title is involved and if the appellants had any grievances relating to title over the said land he should have moved before the competent Civil Court seeking relief. It is seen that the present respondent had initially sought relief for the recovery of possession over the said land and the learned DCLR while deciding the claim of the present respondent held the claim as valid and also restrained the O.P, the present appellants from moving over the said land. From bare perusal of the impugned order itself, it is quite apparent that the case brought before learned DCLR for adjudication involved determination of complex question of share of the parties in the disputed land. Obviously such kind of issue should not have been decided by the learned DCLR under the BLDR Act-2009. Section 4(5) of the said act clearly prohibits the competent authority to deal with such kind of complex issue. Here, in the instant case it is quite apparent that the learned DCLR ignoring the said provision of the act went on to decide the case. As such the impugned order can not be upheld.

For the aforementioned reasons, the impugned order of DCLR, Maharajganj is set aside and accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.


04/08/2018
Commissioner
Saran Division, Chapra.


04/08/2018
Commissioner
Saran Division, Chapra.