

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 109/2015

Uma Shankar Singh & ors.

Vrs.

Anirudh Singh

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in case No. 215/393/2013-14.

The brief facts of the case are that the present respondent Anirudh Singh S/o Late Baldeo Singh, R/o Vill-Gangpur, P.S. Siswan, Dist-Siwan filed a case under the provision of Bihar Land Dispute Resolution Act-2009 DCLR, Siwan Sadar by impleading present petitioner as o.ps. In the said case the present respondent as petitioner had sought relief for removal of encroachment over 4 dhur land, after measurement which has been encroached by the o.ps. (present appellants). The said land measuring 1 katha 18 dhur of plot No. 2759 khata No. 893 situated in Mouza Gangpur stated to have been came in his share after partition by Court. Thereafter, the learned DCLR after hearing the case finally vide order dt. 31.03.2015 disposed of the matter with a direction to the concerned circle officer to get measure the land and remove encroachment. 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 appellant at the very outset of his argument strongly submitted that the impugned order is not sustainable as the dispute brought before learned DCLR, involved determination of question of title and the learned DCLR was not competent authority to decide such kind of dispute under the BLDR Act. He further argued that the entire disputed plot is in possession of the appellants but the learned DCLR without considering the legal aspect of the case passed the order for removal of encroachment and the said order of learned DCLR is without jurisdiction. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents, while opposing the arguments forwarded by the learned counsel for the appellant, submitted that the impugned order is just and proper. He further submitted that as per order and decree passed in partition suit No. 130/1966, the appellants and other two co-sharer only got 9 ½ katha land towards east which is just west of the respondent land and in order to grab the share of respondent he encroached 4 dhur land falling in the share of respondent. He further submitted that measurement issue is maintainable in the BLDR Act and the same has been done for providing quick and easy justice to the parties. He also argued that the Court below has full power to demarcate the land and pass the order of removal and the appellants have wrongly raised the issue that in the present case issue of title and possession are involved. He lastly said that that the impugned order is just and proper.

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 their respective claim over the land in question on one or another basis. The claim of the appellant is

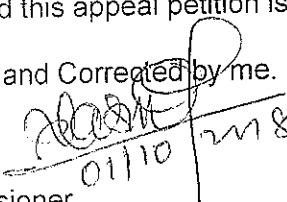
that the case filed before DCLR was not maintainable as in the said case issue of title and possession were involved and on this ground the impugned order is without jurisdiction. On the other hand, the claim of the respondent is that the land fallen in his share after decree in petition suit and part of his share has been encroached by the appellants as such he approached the learned DCLR under the provision of BLDR Act for the measurement of the said land also prayed for removal of possession. His further contention is that the impugned order is just and proper.

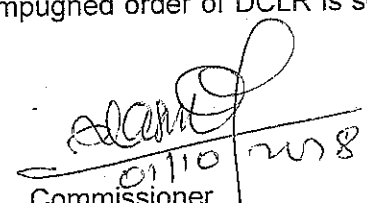
It appears that the dispute between the parties relates to resolution of disputes arising over the raiyati land due to alleged illegal possession. It is important to be noted that none of the parties are either settlee or allottee. Obviously, the case brought before learned DCLR was not maintainable in view of the fact that the said case was not covered by any of the acts mentioned in schedule-1 of the BLDR Act-2009. As such learned DCLR was not competent to decide the said case, whatever may be, relief sought for by the parties.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its recent judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors. Vrs The State of Bihar & ors.) on 31.07.2018 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me.


01/10/2018
Commissioner
Saran Division, Chapra.


01/10/2018
Commissioner
Saran Division, Chapra.