

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal case No. 20/2015
Murli Manohar Mishra
Vrs.
Nand Kishore Mishra
ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Distpute case No. 41/2014-15 on 18.11.2014.

The brief facts of the case are that the present respondent Nand Kishore Mishra S/o Raj Nath Mishra R/o Vill-Dawakia, Circle & P.S.-Bhore, Dist-Gopalganj, filed a case before DCLR, Hathua in which the present appellant was made as o.p. In the said case the prayer made by the present respondent (petitioner) before DCLR was that a recommendation for correction in the Bhoodan certificate issued with respect to 18 ½ of total area 1 katha 17 dhur land of plot No. 67, khata No. 11 of Mouza Dawakia be made to the district Bhoodan office under section 21 of Bihar Bhoodan Yagna Act-1954. Thereafter, the learned DCLR, heard the case and finally vide order dt. 18.11.2014 disposed of the case. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing for the appellant at the very outset of his argument submitted that the impugned order is illegal, bad and erroneous as the said order is without jurisdiction and DCLR has no jurisdiction to issue any direction of partition nor has any jurisdiction to cancel the same granted by competent authority. He further argued that the learned Court below erred in entertaining the case since the case was suffering for want of defect of parties as neither the state nor the Bhoodan Yagna Committee was party in the proceeding. The learned counsel further argued that the appellant as o.p. appeared with the rejoinder challenging the maintainability of the case and the jurisdiction of the Court but without considering the same he passed the order and cancelled the Bhoodan certificate No. 39903 granted in favour of Raushan Mishra the father of the appellant. He also argued that the said land is a Gair Mazurwa Malik land and the same was allotted to the appellant and the claim of the o.p. that the said land being used by him as courtyard and road is entirely wrong. He lastly submitted that due to callous attitude of the C.O., no rent could be fixed in his favour with respect to said land.

The learned counsel appearing on behalf of the respondent opposed the arguments forwarded by the learned counsel for the appellant submitted that the land in question is of Gair Mazurwa Malik nature and in the south of said land the Kashtkari land of o.p. is situated in which his residential house is built. He further said that the disputed land is being used as road and courtyard. He further argued that the appellant wrongly get Bhoodan certificate No. 39903 but over the said land the appellant's father nor the appellant remained in possession rather the possession of respondent is there. He lastly said that the order has been passed by the learned DCLR u/s 21 of Bihar Bhoodan Act-1954 and the said order is valid order as such the same be upheld.

Considering the facts and circumstances of the case material available on records, pleadings forwarded by the learned counsel for the contesting parties and on perusal of



impugned order, it appears that in the instant case dispute between the parties relates to a piece of land measuring 18 ½ dhur. The appellant's claim is that as the said land has wrongly been settled to the respondent and dispute relates to the point that the said land is in his use as and the said land was Bhoodan land. So the settlement done in favour of the respondent be corrected. In view of the nature of dispute between the parties, and the relief sought for by the present respondent before DCLR, as petitioner, should not have been entertained under the BLDR Act-2009. In fact the dispute could have been better be resolved u/s 21 of Bihar Bhoodan Act-1954. Merely the Bihar Bhoodan Act-1954 has been listed in schedule-1 of the BLDR Act, does not give any liberty to the litigant to brought any nature of dispute under the BLDR Act which can be resolved otherwise under the provision of some other relevant Acts. Thus, it appears that the learned DCLR has wrongly entertained the case under the BLDR Act and went on to resolve the dispute which is outside the ambit of the BLDR Act-2009.

For the aforementioned reasons, the impugned order of DCLR 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.