

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 167/2013

Ajay Kumar Tripathi & ors.

Vrs.

Bashistha Mani Tripathi & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in B.L.D.R. case No. 144/2012-13 on 10.05.2013.

The brief facts of the case are that the present respondents (petitioners before DCLR) filed a case before DCLR by making present appellants as respondents in the said case. Further case is that in the said case the prayer of the petitioner was that the land measuring 3 dhur of khata No. 289, plot No. 123 and 2 dhur of land towards, east of the khata No. 579, plot No. 106 situated in Mouza Hasanpur under Bhore circle of Gopalganj district was under dispute because the present appellants (o.ps before DCLR) with the help of antisocial elements dispossessed the petitioner from the said land as such delivery of possession over the said land may be ensured. Thereafter, the learned DCLR heard the case and finally vide order dt. 10.05.2013 allowed the case. Feeling aggrieved by the said order, the present appellants 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, submitted that the impugned order is illegal, bad and erroneous and the same has been passed without jurisdiction. He further submitted that in the impugned order, issue of title has been decided by the learned DCLR but in the BLDR Act no such power is vested in the DCLR and by doing so he exceeded his jurisdiction and usurped the jurisdiction of Civil Court. He further submitted that the dispute basically relates to possession over 2 dhur Bhoodan land and part of khatiyani land also. He also submitted that a case filed earlier by the respondent vide भूदान बेदखली वाद संख्या- 18/12-13 in the Court of DCLR which was allowed in favour of the present appellant as such no further dispute with respect to the said land should have been resolved by the same Court. The learned counsel further submitted that the learned DCLR did not consider the various documents filed before him and passed order ignoring the fact that the said case was not maintainable before him. The learned counsel lastly submitted that the revenue authority does not enjoy the power to pass order with regard to delivery of possession with respect to raiyati land and on this account also the impugned order is erroneous. He lastly argued that this appeal petition being devoid of any merit is fit to be dismissed.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments forwarded by the learned counsel for the appellant and said that this appeal has been filed on a baseless ground only with a view to harass this respondent. He further submitted that it is an admitted fact that both appellant and respondents are claiming over the disputed land under plot No. 106 on the basis of settlement taken from Bihar Bhoodan Yagna Committee. He also submitted that the appellants ancestor has taken only 1.5 decimal land in plot No. 106 whereas the

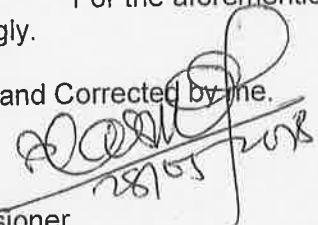
respondent have taken 10.75 decimal. He further clarified that the appellant has already constructed his residential house by amalgamating his khatiyani 4 decimal of land of plot No. 124 alongwith 1.5 decimal of Bhoodan land and house of appellant is already standing over 5.5 decimal land so there is no question of any land of petitioner remained lying outside the house of the appellant and so his claim in plot No. 106 which is outside his residential house is baseless and concocted. He lastly submitted that as the impugned order has been passed after considering all the facts and evidence adduced by the parties so the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case the dispute between the parties relates to their respective possession over the area of land which stated to have been settled to them by the Bhoodan Yagna Committee. It is also an admitted fact by the parties that the said Bhoodan land situated in close proximity of their khatiyani land and both parties, after amalgamating the said Bhoodan land with raiyati land having their possession over that. It is also seen that for the said disputed land a case was also contested by the parties before DCLR in which order was passed in favour of the present appellant. The claim of the appellant is that although, this fact was pleaded before DCLR, but he did not consider this fact and passed the impugned order. It is quite obvious from the impugned order itself that the learned DCLR has passed order for delivery of possession which is quite apparent from the operative part of the order itself which reads thus, "अतः उपरोक्त तथ्यों एवं परिस्थितियों के आधार पर इस बात को स्वीकृत किया जाता है तथा विपक्षीय को आदेश दिया जाता है कि वे तकरारी जमीन से अपना दखल कब्जा इस आदेश के पारित होने की तारीख से पन्द्रह दिनों के हटा कर आवेदकगण को दखल कब्जा दे दें। अंचल पदाधिकारी, भोरे को मापी करते हुए आदेश का अनुपालन करेंगे।"

As, the instant dispute between the parties relates to the land donated by Bihar Bhoodan Yagna Committee and the Bihar Bhoodan Yagna Act is covered under the BLDR Act and included in schedule-1 of the BLDR Act, the order passed by the learned DCLR seems to be within his jurisdiction and the said order is also seems to be valid and proper as such the same is upheld.

For the aforementioned reasons, the instant appeal petition is dismissed accordingly.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.