

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 110/2015

Kanhaiya Singh & ors.

Vrs.

Paras Prasad

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in Misc. Case No. 01/2014-15 on 07.04.2015.

The brief facts of the case are that the present respondent Paras Prasad S/o Late Durga Prasad, R/o vill-DK Sarangpur, P.S.-G.B. Nagar Tarwara, Circle-Pachrukhi, Dist-Siwan filed a case before DCLR in which the present appellants were made as o.ps. In the said case the relief sought for by the petitioner was that the disputed land measuring 16 dhur situated in Mouza Tarwara was purchased by him through three sale deeds in the year 2012 and 2014 from donee of the said land as such the earlier jamabandi running with respect to said land be corrected and recovery of possession be granted after removing encroachment made by o.ps. The learned DCLR after hearing the case finally vide order dt. 07.04.15 decided the matter holding that the earlier jamabandi No. 700 appeared to be suspicious and further directed the C.O. that an enquiry be conducted regarding jamabandi and if encroachment is found, further action be taken. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal.

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 illegal, erroneous and fit to be dismissed in view of the fact that in the instant case involved determination of complex question of title and the learned DCLR is not competent to pass any order with respect to title of the parties under the BLDR Act. He further submitted that the said jamabandi runs in the name of ancestors of the appellant and the respondent wrongly filed a case before DCLR seeking correction of the said jamabandi. He also argued that the learned DCLR wrongly passed the order regarding recovery of possession in favour of respondent. He further submitted that the appellants house is situated in disputed land and the respondent is tenant of the appellant and when the appellant put pressure on respondent to vacate the same, he filed the case before DCLR with wrong averments. He lastly said that as the order of DCLR is beyond jurisdiction and against the provision of BLDR Act, the said order is fit to be dismissed.

The learned counsel for the respondent strongly opposed the arguments forwarded by the learned counsel for the appellant and supported the impugned order by saying that the same is legal and valid. He further narrating the details of the case, said that the disputed part of land was actually purchased by the respondent through sale deeds and having his possession over that. He further argued that although, appellants claimed that they have possession over the said land but the same was not found true in inquiry by C.O., C.I. and Revenue Karmchari rather the possession of respondent was confirmed in the report. He further revealed that respondent has

already filed a jamabandi correction case No. 36/2015-16 before Addl. Collector, Siwan for the cancellation of jamabandi No. 700 created illegally in the name of the ancestors of appellants. He lastly said that this appeal petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the dispute between the parties relates to raiyati land. In fact, the present respondent had approached the learned DCLR seeking recovery of possession over the disputed land and also for correction in the jamabandi No. 700 standing for the said land. Obviously, the learned DCLR should not have dealt with the matter in the BLDR Act. It is also an admitted fact by the parties that neither of them comes under the purview of allottee or settlee and nor the subject matter falls under any of the six acts mentioned in schedule-1 of the BLDR Act. As such the case was not maintainable before the DCLR.

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 judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors The State of Bihar & ors) on 24.06.2014 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 observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


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