

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 72/2015**

**Ram Kawal Yadav & ors.**

**Vrs.**

**Bishnu Bhagwan Mishra & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajanj in Land Dispute Resolution case No. 104/2014-15 on 05.01.2015.

The brief facts of the case are that the present respondents Bishnu Bhagwan Mishra and his two brothers, S/o Late Gopal Mishra, R/o Vill-Mohammadpur Pathi, P.S.-G.B. Nagar, Circle-Goreya Kothi, Dist-Siwan filed a case before DCLR as petitioners under the BLDR Act-2009 in which present appellants were made as o.ps. In the said case the relief, sought for by the petitioners that an old house situated on plot No. 1804, khata No. 134 having area 2 katha 10 dhur has been demolished by the o.ps using JCB as such encroachment of o.ps be removed and possession of petitioners be delivered alongwith cost. Thereafter, the learned DCLR after hearing the case finally passed a detailed order considering each and every aspects of the case and ultimately passed order on 15.01.2015 restraining the o.ps (present appellants) form creating any obstruction over the disputed land and also directed the local C.O. and S.H.O. to ensure recovery of possession to the petitioner (present respondents) as the o.ps had made illegal encroachment. Feeling aggrieved by the said order the present appellants have preferred the instant appeal petition before this Court.

Meanwhile during pendency of the case, the appellant No. 7 died and this led to addition of the name of his legal representatives in this appeal vide order dt. 09.04.2016 of this Court.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellants at the very outset of his arguments submitted that the impugned order is illegal and without jurisdiction. He further submitted that the Court below ought to have held that the present case is for declaration of title and recovery of possession so this case is beyond jurisdiction. He also strongly argued that the learned DCLR can not decide the title of the parties nor can give recovery of possession on the basis of title. The learned counsel further submitted that the Court below erred in not considering sec. 4(1)b of the BLDR Act., where recovery of possession may be given to settled or allotted land and not an raiyati land and even also not considered the case law reported in 2014 PLJR Vol.-3 page No. 281 wherein it has been held that claim of land on the basis of sale deeds can only be decided by Civil Court. He further submitted briefly about nature of dispute and also about the claim of the appellants over the disputed land. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel for the respondents vehemently opposed the arguments forwarded by the learned counsel for the appellants and submitted that in the instant case there is no question of adjudication of title of the parties. He further



submitted that this case is maintainable under section 4(1) d of the BLDR Act, so the order passed by the learned DCLR is detailed having no ambiguity and the said order is just and proper. The learned counsel further argued that the appellants illegally demolished the old house of the respondents which was standing over the land which was transferred to their ancestor by the khatiyani raiyat of the appellants. He further said that the learned DCLR has not decided the title rather he only ordered for the recovery of the possession of the disputed land which has been illegally encroached by the appellants. The learned counsel further argued that the case law cited by the appellant with respect to the decision of the Hon'ble High Court given in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors., the same is not applicable in the facts of the present case as such the impugned order is well under jurisdiction of the learned DCLR so the same is fit to be upheld. He lastly said that the instant appeal petition being devoid of any merit is fit to be rejected.

Considering the facts the circumstances of the case, material available on the records and on going through the respective submissions advanced by the learned counsel for the parties, it is seen that the dispute between the parties mainly relates to recovery of possession over the disputed piece of land. It is seen that the appellant's claim is solely based on they being the legal heirs of raiyat who exchanged the land as such they have got absolute right over the disputed land whereas the respondents claim to have legal heirs of khatiyani raiyat. Although, the learned DCLR has not decided the title of the parties but he passed order with regard to recovery of possession of raiyati land.

Thus, it is quite apparent that there involves determination of complex question of recovery of possession of raiyati land and it is well settled that such a complex issue can not be decided under the BLDR Act. The Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and others) on 24.06.2014 has clearly 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 and also held that complex question of title can never be decided in a summary proceedings.

For the aforesaid reasons and discussion made therein, it is clear that the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.

  
31/08/2017  
Commissioner  
Saran Division, Chapra.

  
31/08/2017  
Commissioner  
Saran Division, Chapra.