In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. appeal No. 122/2012
Jamadar Singh & Ors
Vrs.
Bimlesh Sharma & others
ORDER

18.09.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Sonepur in BLDR case No. 45/2011-12 on 30.11.2012.

The brief facts of the case are that Jamadar Singh, S/o Late Ram Briksha Singh, R/o Vill-Mahamadpur, P.S.-Dariyapur, Dist-Saran filed a case under the provision of BLDR Act-2009 before DCLR Sonepur. In the said case the present respondents were made o.ps and relief sought was for the appointment of a survey knowing Commissioner for demarcating the boundary by measurement of the land in question having area 1 katha 07 dhur appertaining to khata No. 376 plot No. 643 situated in the Vill-Mohamadpur. Thereafter, the DCLR registered BLDR case No. 45/2011-12 and issued notices to the o.ps. Finally he heard the parties and held that the o.ps are eligible for consideration under the provision of Bihar Privileged person Homestead Tenancy Act-1947 and accordingly they can file their petition for grant of parcha before competent authority and with this observation he disposed the case vide order dt. 30.11.2012.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellant has preferred this appeal.

Heard the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order submitted that the said order is erroneous and also against the law and facts of the case. He further argued that the learned lower Court should have allowed the petition and should have also ordered for demarcation of the entire disputed plot but made out a third case for which neither the appellant has stated anything in his petition nor he sought any relief during the proceeding before DCLR. He further argued that it is an admitted fact that the disputed land is the ancestral land of the appellant and upon which his house is also situated but the claim set up by the o.ps on the basis of alleged patta dt. 14.02.1961 which is a forged document is completely unfounded and against law. He also argued that even the local Revenue Karamachari also in his report submitted to the C.O. Dariyapur, in which it has been reported that the said patta of the o.ps is a forged document and he found the possession of the appellant over the said disputed land. The learned counsel lastly said that the impugned order of DCLR should be set aside and order for measurement may be given by allowing this appeal.

The learned counsel appearing on behalf of the o.ps while appreciating the impugned order of DCLR, submitted that the said order is just and proper and the same has been passed after perusal of various documents like, order passed u/s 144

Cr.P.C, rent receipt and inspection report of criminal case and even the learned DCLR also held that the o.ps are entitled to get parcha under BPHT Act-1947. He further argued that the fact is that the disputed land is coming in the possession of the ancestor of the o.ps Munshi Thakur and after his death o.ps are coming in possession since 1961 as the father of the appellant had executed a patta on 14.02.1961 in the name of Munshi Thakur who was the grand father of the respondents and the said document was also filled before DCLR. He lastly submitted that since the disputed land is in continuous possession of the o.ps, the appellants has no legal right to claim the same after such long time.

Considering the facts and circumstances of the case, material on records, claims and counter-claims advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that the appellant had actually approached the learned DCLR for appointment of a survey knowing Commissioner for demarcating his land which is stated to be recorded in khatiyan in the name of his ancestor and has now came in his share. However, the learned DCLR instead of passing any order on the relief sought for by the appellant, decided something else which was certainly not the subject matter of dispute at initial stage. The appellants claim is based on the fact that his ancestor was the khatiyani raiyat of the disputed land and his grand father had never executed any patta in favour of the present o.ps and the so called claim of the o.ps is that that the said land was obtained through patta in favour of this ancestor Munshi Thakur by the father of the appellant and ever since then they are coming in possession over the same is totally wrong. Thus, it is quite obvious that the learned DCLR is not correct in his finding inasmuch as he deviated from passing an appropriate order by properly appreciating the facts of the case. In fact he should have confined his order either to allow the prayer made for or to reject the same but under no circumstances he should have passed order for which no prayer was made for at least in memorandum of the petition or during the oral submission by the appellant in the proceeding before him.

Thus, for the aforementioned reasons, the impugned order is not sustainable, hence the same is set aside and the case is remitted back to the DCLR, Sonepur for fresh consideration in the light of prayer made for and relief sought for by the appellant in his original petition filed before him.

Accordingly, this appeal petition is disposed of.

18.9.15

Commissioner,
Saran Division, Chapra

Dictated and Corrected by me.

18.9.15

Commissioner,
Saran Division, chapra