

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 141/2012

Abhay Kumar Singh

Vrs.

Noor Alam

ORDER

22.09.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajanj in BLDR Case No. 43/2011-12 on 17.04.2012.

The brief facts of the case are that the present respondent Noor Alam S/o Gualm Mustafa R/o Village- Pasmauli, P.S.- Mahrajanj, Dist- Siwan filed a petition in the public grievance cell of Siwan district on 26.05.2011 which was transferred to DCLR, Mahrajanj and thereafter, a case vide BLDR Case No. 43/2011-12 was initiated. The case of the present respondent was that the land in question measuring 02 katha of khata No. 191, Plot No. 326 was purchased by him from Md. Muslim on 06.04.2005 and over the said land, the present appellant who happened to be the secretary of Jarti Mai Committee was trying to construct the temple premise by threatening him. Thereafter, the learned DCLR after issuing notice to the present appellant, heard the case and finally vide order dated 17.04.2012 allowed the case and also restrained the present appellant from encircling the land in question. Feeling aggrieved by the said order, the present appellant (o.p. before DCLR) has preferred this appeal case before this court.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted that the land measuring 07 katha of plot No. 326, Khata No. 191 is recorded in the R.S. Khatiyan in the name of one Lakhan Thakur and the said land was dedicated on 21.03.1971 by the said Lakhan Thakur to Harkhu Das, priest of the "Jarti Mai Mandir." through affidavit. He further submitted that after the demise of the priest the local people selected the present appellant as secretary of the committee constituted for the management and development of the temple. He also submitted that a preceeding u/s 144, & 145 was decided by SDO in favour of the temple and the criminal revision filed against the said order of SDO before Addl. Session judge (FTC-1) Siwan who vide order dated 10.04.2012 upheld the order of SDM, Mahrajanj. He further submitted that the present respondent obtained the impugned order by suppressing the real facts of the case by not making the "Jarti Mai" as a necessary party in the proceeding before DCLR. He lastly submitted that as the impugned order is an ex-parte order, the same is not sustainable and fit to be set aside.

The learned counsel for the respondent, while strongly opposing the arguments forwarded by the learned counsel for the appellant, submitted that the claim of the appellant that the disputed land was dedicated to the Jarti Maiya by the recorded tenant on 21.03.1971 is totally wrong because on that day the so called Lakhan Thakur was not alive as such no question of execution of dedication deed arise. He further submitted that the documents upon which the claim is founded is forged, concocted and



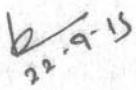
showy. He also argued that the impugned order is legal and proper because the learned DCLR has taken into consideration all documents and after proper analysis the said order has been passed and the appellants failed to produce any evidence in support of his claim relating to right, title and interest over the disputed land.

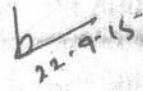
Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute brought before the DCLR, certainly involves the question of adjudication of right and title of the parties over the disputed land. The claim of the appellant is that the said disputed land was dedicated in favour of a temple named "Jarti Mai" by the recorded Khatiyani Tenant, Lakhan Thakur. However, this claim is disputed by the respondent on the ground that part of the said land was purchased by his father through registered sale deed from one Md. Muslim on 06.04.2005. Thus, it is quite evident that in the instant case, complex question of title is involved which should not have been decided by the learned DCLR as the relevant provision in the BLDR Act- 2009 itself forbids the revenue authorities from deciding the complex issues of right and title under the BLDR Act- 2009. The Hon'ble High Court also in its order in CWJC 1091/2013, Maheshwar Mandal and Ors. Vrs. The State of Bihar and ors has clearly observed that adjudication of complex question of title is outside the purview of the BLDR- Act- 2009.

For the aforementioned reasons, the impugned order is not sustainable, hence the same is set aside.

Accordingly, this appeal is disposed of.

Dictated and Corrected by me.


22-9-15
Commissioner,
Saran Division, chapra


22-9-15
Commissioner,
Saran Division, Chapra