

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 77/2013

Chhathu Ram & ors.

Vrs.

Lalita Devi & ors.

ORDER

23.12.2016 - The instant appeal is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 23/129/2012-13 on 12.12.2012.

The brief facts of the case are that the present respondent Lalita Devi W/o Bandhan Ram, R/o Vill-Sonhula, P.S.-Guthani, Dist-Siwan filed a case before DCLR, Siwan Sadar by impleading the present appellants as o.p. In the said case the present respondent had prayed for measurement, demarcation and removal of encroachment from disputed land measuring 3 katha 18 dhur of plot No. 19, khata No. 702 situated in Mouza sonhula which was purchased by her from Rajnath Singh through registered sale deed in the year 1995. Therefore, the learned DCLR, after issuing notice to the o.ps (the present appellants) heard the case and finally vide order dt. 12.12.2012 held that the o.ps (appellant before this Court) have made encroachment over 1 katha of land which is illegal and accordingly directed the C.O. Guthani to remove the encroachment of the from the said land. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted in detail as to how the appellants came in possession over the said land on the basis of Basgit Parcha issued in their favour. He further submitted that the order of the Court below is bad in law as it has been ordered that possession of the appellant be restored for which the Court below have jurisdiction and the person claiming privileged person's right can not be dispossessed in any manner without jurisdiction and that too without properly verifying the records. He also argued that the Court below wrongly relied upon the report of C.O. and the learned DCLR went on ordering for the removal of encroachment whereas the present respondent had sought relief for the measurement of the land. He also submitted that the only ground taken by DCLR is the report of C.O. in which it was stated that record relating to settlement was not available in Circle Office. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent submitted that the pleas taken by the appellants in support of their case are not acceptable as the very ground framed by them that the said land was settled to him through parcha is totally wrong because the said parcha itself is forged and fabricated. He next submitted that the respondent is the purchaser from rightful owner Raj Nath Singh, the heir of khatiyani raiyat through sale deed and now having her peaceful possession and she also used to pay rent to the state. The learned counsel lastly



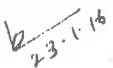
argued that the appellant can not be allowed to disturb the peaceful possession of the respondent on the basis of forged and fabricated parcha and it was due to that reason the learned DCLR has rightly ordered to vacate the said land as such the said order can not be interfered now.

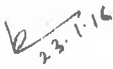
Considering the facts and circumstances of the case, material available on records, claims and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute between the parties basically relates to their respective right over the disputed piece of land. The appellants claim is based on the ground that the said land was allotted to him as a privileged person through parcha. However, the respondent controvert the said claim on the ground that the said parcha itself is forged and fabricated and this has been also confirmed by the C.O. in his report sent to the DCLR wherein it was stated that no record relating to grant of parcha in favour of the appellant was available in the circle office. On the other hand the claim of the respondent is that the said disputed land was purchased by her through sale-deed from the rightful owner and having her possession and jamabandi is also existing in her name but the appellants have encroached 1 katha of the said land illegally.

In view of the nature of dispute involves in the present case as well as from the detailed order of the DCLR, it appears that the instant case itself was not maintainable under the BLDR Act as the dispute essentially involves the question of willful encroachment over private land. It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court also in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. has observed that revenue authorities are not vested with the power under the BLDR Act to entertain matters not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009.

For the aforementioned 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 not sustainable and hence the same is set aside and the appeal is accordingly, disposed of.

Dictated and Corrected by me.


23.1.16
Commissioner,
Saran Division, Chapra


23.1.16
Commissioner,
Saran Division, Chapra