

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 199/2011

Albela Yadav

Vrs.

Shiv Shankar Yadav & ors.

Corrigenudm

This case was disposed of by this Court on 29.09.2015. In the last paragraph of the order, *in place of DCLR, Maharajganj it has been inadvertently typed as DCLR, Siwan Sadar* which is rectified accordingly. So in place of DCLR, Siwan Sadar the same may be read as *DCLR, Maharajganj*. Rest part of the order will remain as such.


17.10.15
Commissioner,
Saran Division, Chapra

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 199/2011
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Vrs.
Sheo Shankar Yadav & Ors.
ORDER

29-09-2011 The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 56-45/2011-12 on 21.10.2011.

The brief facts of the case are that Sheo Shankar Yadav S/o Dhanpat Yadav and some other persons of village Fatehpur, P.S. Daraudha, Dist-Siwan filed an application before D.M. Siwan. Whereupon the BLDR case No. 56-45/2010-11 was initiated by DCLR, Maharajganj. In the said case, the plea taken by the present respondent (petitioner before DCLR) was that the land in question measuring 3 bigha, 7 katha, 5 dhur appertaining to khata No. 144 survey plot No. 726 is recorded in the khatiyani as Dih-basgit Pokhara- which comes under sairat. His further case was that the present appellant Albela Yadav and his son Rabindra Yadav have got settled part of the said big plot and if any settlements exist the same is liable to be cancelled as per rule. Thereafter, the learned DCLR after issuing notice to the present appellant (o.p before DCLR) heard the case and finally vide order dt. 21.10.2011 directed the C.O. Daraudha to send a proposal for cancellation of said settlement along with record of settlement case No. 15/1988-89 and 23/1990-91 and also directed to initiate proceeding for cancellation of any settlement in favour of Harendra Yadav and Sheo Shankar Yadav with respect to the land settled to them for certain period for certain purpose so that the land in question can be declared as sairat land from which govt. can get substantial revenue.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellants has preferred this appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted in details, at the very outset of his argument, that how the appellant and his son came in possession over 1 bigha 14 katha 5 dhur of land in plot No. 726, khata No. 144 recorded in khatiyani as Gair Mazurwa Malik Pokhara through settlement by the concerned authority. He also submitted that they have been granted receipt for the said settlement and paying rent and are now enjoy the status of settlee having their possession also. He further submitted that on some part of the plot being used by them for cultivation and part of the plot which is as ditch, they rear fish every year. He further argued that in the past one Krishna Bind had filed CWJC No. 1938/1993 before Hon'ble High Court against the State of Bihar in which the settlement of appellant has been discussed and till now the appellant have perfected their right of adverse possession. He also argued that one Raghubansh Mahto has filed a Title suit No. 662/2010 against the state of Bihar in which the appellant is also a defendant and said case is still

pending for disposal. He also argued that the Court below under the influence of local pressure passed the order to initiate the process of including the said land in sairat register. He also submitted that once the State Government has legally settled the land in question, rent was fixed, settlement parcha was granted and settlee are in possession, then their eviction by cancelling the settlement during pendency of T. Suit is illegal. He lastly prayed that the impugned order be set aside and this appeal be allowed.

The learned counsel appearing on behalf of the respondent, strongly opposed the averments made by the learned counsel for the appellant and submitted that the learned DCLR after carefully considering the whole facts of the case and after going through the records, passed a detailed and reasoned order. He further argued that even Addl. Collector also did not found the settlement in favour of the appellant as genuine and valid. He lastly submitted that the impugned order is fit to be upheld and this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims raised by the learned counsel for the parties and on perusal of the written statements and impugned order, it is seen that in this case main issue to be decided is as to whether the settlement done earlier in favour of the appellant from part of the big plot recorded in khatiyān as Gair Mazurwa Malik Pokhara is a valid settlement or not. It is quite obvious from the order of DCLR that each and every aspects of the case has been dealt with at length and all necessary documents have been taken into consideration while arriving at the final findings of facts with respect to the land in question vis-a-vis its nature recorded in khatiyān and its present position. Apparently, there seems to be no illegality in the said findings of DCLR wherein he held that the earlier settlements made in favour of the appellant are not valid. The learned counsel for the appellant miserably failed to point out any specific illegality in the said order.

For the aforesaid reasons, I do not find any infirmity in the impugned order of DCLR, Siwan Sadar as such the same is upheld and this appeal petition being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.

b/29-9-15
Commissioner,
Saran Division, Chapra

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Commissioner,
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