

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 260/2013**

Akhtar Hussain

Vrs.

Jamil Akhtar & ors.

ORDER

21-11-2015 — The instant appeal petition is directed against the impugned order passed by DCLR Maharajganj in B.L.D.R. case No. 28/2013 on 17.08.2013.

The brief facts of the case are that the present respondents Jamil Akhtar & ors filed a case before DCLR, Maharajganj by making present appellant as o.p. wherein their prayer was that the present appellants (respondent before DCLR) had made illegal possession over 3 dhur of land by putting two Khops on the western side on part of the land of plot No. 1997 khata No. 118 having its total area is 2 katha 14 dhur from which the illegal possession be removed by removing the khops and possession be delivered to him. The learned DCLR after issuing notice to the parties, heard the case and finally by order dt. 17.08.13 allowed the said case and ordered for vacating the encroachment and also restrained from making any interference in future.

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

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the learned DCLR was pleased to decide the complicated question of title between the parties to which he was not competent to decide in view of the decision of the Hon'ble High Court, reported in PLJR-2014(3) page-281, Maheshwar Mandal & ors Vrs The State of Bihar and ors. He further submitted that from perusal of the relief sought by the present respondents before DCLR, clearly shows that they had prayed for determination of their title in the disputed land as such the case itself was not maintainable before the learned DCLR as the respondent does not come under the purview of allottee and settlee under the BLDR Act. The learned counsel further quoted the various provisions of section-4 of the BLDR Act to substantiate his plea that the learned DCLR was not competent to decide the complicated question of title under the BLDR Act. He further submitted in detail about the disputed land and how the land was sold by one person to another at different point of time and also submitted that the complicated issue of title involved in this case can not be decided by the DCLR. He lastly submitted that DCLR is not competent to decide complex question of title and the land in question is not allotted or settled land of the respondents hence the case filed by respondent before DCLR was not maintainable and on this ground the impugned order passed by learned DCLR is liable to be set aside.

The learned counsel appearing on behalf of the respondents vehemently opposed the arguments forwarded by the learned counsel for the appellants and




DCLR, Maharajganj.

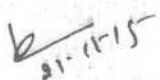
submitted that the impugned order of DCLR is just and proper and in accordance with the provision of BLDR Act. He further argued that the appellant claims his alleged title and possession on the basis of sale deed of 19.11.1960 and says the sale deed of respondents dt. 05.10.1966 and 11.03.2009 are based on forged documents but he failed to prove the same before the lower Court. The learned counsel further elaborated the fact relating to respective share of the descendents of Rahim Ahmad. He further submitted that the learned DCLR visited the spot on 17.08.13 for inspection of 9 dhur of land and he noted the actual state of affairs at the spot and found that the present appellant has put khops on the disputed land. He also submitted that the respondents have acquired valid title and possession with respect to their purchased land. He lastly said that there is no infirmity in the order of DCLR dt. 17.08.13 and the present appeal has got no merit as such it is liable to be rejected.

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 passed by DCLR, Maharajganj, it is seen that the present respondent had initially approached the learned DCLR for removal of the illegal possession made by the present appellant over 3 dhur of his land and the learned DCLR after hearing the parties and on visiting the spot found that the present appellant has illegally put khops over the said land and accordingly he ordered for the removal of the same. This obviously shows that neither the present respondent had sought any relief regarding determination of right and title of the parties over the land in question nor the DCLR has passed any order in that light. The contention of the appellant's counsel is that the said order is not legally maintainable under the BLDR Act as the DCLR was not competent to decide complex question of title of the parties. This contention of appellant's counsel seems to be improper vis-a-vis the findings arrived at by the DCLR as he has not passed any order with respect to the title of the parties nor the petitioner has filed the case for determination of title.

Thus, for the aforesaid reasons, I do not find any reason to make any interference with the impugned order. As such the same is upheld. Accordingly this appeal petition is dismissed.

Dictated and Corrected by me.

 21-11-15
Commissioner,
Saran Division, Chapra

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