

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 125/2012

Vinoba Nand Singh

Vrs.

Meena Devi & Ors.

ORDER

11.08.2015 - This instant appeal application is directed against the impugned order passed by DCLR Hathua in BLDR Case No. 122/2011-12 on 15.02.2012.

The brief facts of the case are that one Meena Devi W/o Jai Prakash Singh R/o Village- Chhitauna, P.S.- Kateya, Dist- Gopalganj had filed a case before DCLR, Hathua wherein her prayer was that the piece of land measuring 4.75 decimal appertaining to Khata No. 110, Plot No. 342 for which a Bhoodan certificate granted to her out of which 2.5 decimal land has been forcibly encroached by the present appellants (respondents before DCLR) by dispossessing her. Thereafter, the learned DCLR after issuing notices to the party and on hearing the matter finally held that the present appellants do not have any right of possession over 2.5 decimal of Bhoodan land of the present respondents (petitioners before DCLR) as such the same is illegal and accordingly allowed the petition of the present respondents and also directed the present appellants to remove their possession from the said land and also directed C.O. Panchderi for implementing the said order vide order dated 15.02.2012.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellants have 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 area of Plot No. 342 is 2 acre 22 decimal out of which 26 decimal of land has been settled with the appellant by Bhoodan Yagna Committee vide order dated 09.09.1976 over which he has constructed his residential house and established Nad, Khuta and Palani. He further stated that in Land Distribution case, settlement were made in favour of nine persons which was cancelled by Bihar Bhoodan Yagna Committee and O.P. No. 1 was one of them. He further argued that the land in question is Gair Mazurawa Malik land of Hathua state and Hathua state donated the said land to Bhoodan Yagna Committee and the fact is that Bhoodan Yagna Committee settled 26 decimal of land with the present appellant. The learned counsel further cited the various provision of BLDR Act- 2009, and stated that under section 4(2) of the said act "the competent authority shall not have jurisdiction to review or reopen any finding concluded and adjudicated under any of the act contained in schedule - 1. So the competent authority is not empowered to review or reopen the settlement made in favor of appellant Vinoba Nand Singh. In view of the above provision the competent authority should have dismissed the petition filed by O.P. No. 1 but the competent authority has overlooked the order passed in Bhoodan Bedhakli case No. 27/2010-2011 which was filed by O.P. No. 1. He also said that in any view of the matter the impugned order is not sustainable and it could be set aside. He also submitted that it was highly illegal and improper that the appellant who is Bhoodan Tenant from the year 1976 and was in joint possession with respondents 3rd set who were having house and sahan upon their settled lands were wrongly directed to demolish their

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structure and construction and hand over possession to respondent No. 1 who claims to be alleged settle of it from Bhoodan only in the year 2010 specially when her Bhoodan Praman Patra is void and inoperative document because the title of Bhoodan had already vested in the appellant by virtue of settlement in the year 1978 as per section 14 of Bhoodan Act and that in the year 2010 Bhoodan Yagna Committee had neither any title nor authority to settle said land to respondent No. 1. He lastly submitted that the question of title is involved in this dispute and competent authority has no jurisdiction to decide question of title under the BLDR Act and the DCLR has acted beyond his jurisdiction.

The learned counsel appearing on behalf of O.P. No. 1 submitted that he has already filed a rejoinder to this appeal wherein each and every issues raised in the said petition has been contradicted and the ground taken by the appellant are false and baseless and having no legal validity. He further said that the order passed by DCLR is quite valid and in case No. 122/2011-12 there is no question of title was involved rather question of possession and illegal dispossession was involved and the learned DCLR well within his power to decide the same because, the appellant has illegally dispossessed the respondent No. 1. He further submitted that it is worthy to say that the appellant has also filed T.S. No. 750/2013 before the court of sub-judge- 1 Gopalganj over the same subject against the respondent No.1 as such according to provisions of section 10 of the BLDR Act the present appeal may be dismissed. He lastly submitted that there is no illegality in the impugned order which requires no interference by this learned court and so the appeal may kindly be dismissed.

Considering the facts and circumstances of the case, material on records and on going through the impugned order as well as the written arguments filed by the parties., it is seen that the dispute between the parties basically relates to their possession over the land alleged to have been settled to them by Bhoodan Yagna Committee. The appellants is of the view that the learned DCLR has got no power under the BLDR Act to reopen an issue which has already been settled and since in the case involves question of title as such the learned DCLR was not competent to decide title under the BLDR Act and by doing so he has acted beyond his jurisdiction. On the other hand, the learned counsel for the respondent No. 1 is of the view that the case before DCLR was that in which no question of title was involved rather question of possession was involved and the learned DCLR was competent to decide that. But from the material available on record it is seen that both parties are Bhoodan tenant who have been allotted land from a big plot on deferent dates and now the dispute between them relates to their respective possession over the area of the said allotted land. Thus, it appears that virtually the dispute is confined to their respective possession over the allotted land and also of finding out as to whether there is any encroachment or not. The learned DCLR has discussed all aspects of the case while arriving at his findings. I do not find any reason to make any interference in the said order of DCLR. As such the same is upheld.

Accordingly, this appeal is disposed of.
Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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