

In The Court of Commissioner, Saran Division, Chapra

**B.L.D.R. Appeal No. 35/2014
Chandra Bhushan Duwedi & ors.**

Vrs.

Hari Shankar Tiwari & ors.

ORDER

28.03.2014 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in B.L.D.R. case No. 124/2012-13 on 05.12.2013.

The brief facts of the case are that a case was initiated by DCLR, Maharajganj pursuant to a petition filed by the lawyer of the present respondents under the BLDR Act-2009. In the said case, the plea of the present respondents (petitioner before DCLR) was that a piece of land measuring 3 bigha 15 katha, 6 dhur appertaining to khata No. 82 R.S. plot No. 3237 situated in Mouza patedha, circle-Maharajganj, Dist-Siwan is recorded in khatiyan as Thakurjee Shirishokami Laxami Narain, Vill-Saidpur on which the o.ps (present appellants) and their ancestor used to do cultivation and also used to pay Rs. 200 per khata after every six month for maintenance of the temple. His further case was that as they stopped the said payment which has resulted in stoppage of payment to the priest of the temple, as such the outstanding dues be paid to them and the land in question be made free from their possession. Thereafter, the learned DCLR, issued notices to the parties also considered the intervener petition filed by some person in midst of the proceeding and finally after hearing all the parties, held that the said disputed land belongs to the deity Laxami Narain and no body has got right to sale or transfer the same and as such all such sale deeds and Jamabandis with respect to the said land were declared as void and also directed that the said land be vacated vide order dt. 05.12.2013.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellants (o.ps before DCLR) have preferred this appeal petition before this Court.

Heard the learned counsel for the parties


The learned counsel appearing on behalf of the appellants at the very outset of his argument, submitted in details about the whole course of events leading to coming of the land in question in possession of the appellants and also how the different persons who were in possession over different areas of the said big plot transferred the same to the different persons through registered sale deeds on different occasions. The learned counsel also argued in detail as to how the case was not legally and factually maintainable and also barred by limitation. He also submitted that the case before DCLR was filed by the present respondents on false and concocted grounds with ulterior motive and as there involves complicated question of title and possession in the instant case, the same was not maintainable in view of the provision u/s 4(5) of the BLDR Act-2009. He further raised the point that as Sri Thakurjee Laxami Narain jee has neither title nor possession nor any way concerned with the land in question at all and he is not in existence at the spot how his title and possession can be considered over the said land. He further clarified that the



land in question situated at village-patedha at a long distance of 15 K.M. from village Saidpur, so it was not profitable also for the upliftment of the temple and also for the benefit of deity so Sri Fuleshwari Sharan Singh, the Mutwali of the temple and also co-sharer of land settled the entire plot No. 3237 in favour of Dhenuk Dubey and Shital Dubey, S/o Deo Nandan Dubey and Bulaki Sah of village Patedha after taking Nazrana and settled the same and handed over possession over the said land. He also submitted that the settlees being in actual cultivating possession of their respective settled land paid rent to the ex-landlords regularly upto vesting of the Jamindari and ex-landlord had also filed returns in the name of settlees and in cause of time the different persons transferred the said land to the different person through registered sale deed. The learned counsel also assailed the impugned order by saying that the said order of DCLR is erroneous and illegal so far as he decided the complicated question of title and possession which is outside the purview of the BLDR Act and as such he should not have dealt with such a complex matter in which determination of complex question of right title and possession are involved. He lastly submitted that as the impugned order is illegal, arbitrary and without jurisdiction, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondents while vehemently opposing the arguments and points raised by the learned counsel for the appellants, submitted that the impugned order has been passed by the learned DCLR is a legal and valid order as the same has been passed after careful consideration of various documents filed by the contesting parties. He further argued in detail about the whole facts of the case and also referred to various case laws in support of his contention that the said disputed land belongs to the deity and the respondents are the actual care-taker of the said land and the appellants are in collusion with the circle employees have got created false paper regarding their possession over the said land. He also quoted the various provision of Bihar Religious Trust Board Act-1950 in support of his contention that the land belonging to temple can neither be rented nor be transferred and he also filed the copies of some reported judgments in support thereto also.

Considering the facts and circumstances of the case, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the said disputed land is recorded in name of Thakur jee, a deity, in the revenue record but it is also an admitted by the parties that the said land was in their possession since long before and have perfected their right on the basis of adverse possession. But the crux of the matter is that both appellants and respondents have made the issue a bit more complex as they claim that the said land was settled to them on certain terms and condition by the Ex-landlord and the legal heirs of such settlees transferred the said land on several occasions to several persons through registered sale deed and the person who purchased the land subsequently also got created jamabandi for the said purchased land. Thus, it appears that there is a serious dispute of right and possession amongst the contesting parties over the said land. Undoubtedly it is true that such a complex nature of dispute amongst the parties can not be adjudicated by summary proceeding under the BLDR Act and even the BLDR Act also does not confer any jurisdiction to the original authority the DCLR, to decide a complex nature of dispute relating to rival claim of right stated to have been acquired through one or another basis. Moreover, the learned DCLR by his meticulous attempt tried to resolve the



dispute on the basis of certain documentary evidence available on record like khatiyas but in over zeal he went on to declare all the jamabandis existing in the name of different persons as well as their respective sale deeds as void. Obviously this should not have been done as it is almost settled in law that long running jamabandis can not be cancelled until and unless it is proved through substantial evidence that the same has been obtained fraudulently and also he is not competent to decide the validity of sale deed documents. In fact it is the Civil Court which exclusively vested with the power to deal with such issue as has been held by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. It appears that the learned DCLR has went to declare the alleged sale deeds and jamabandi as void which is explicit from the operative part of the impugned order itself which reads as follows:- "उपर्युक्त तथ्यों से यह स्पष्ट होता है कि प्रश्नगत भूखण्ड खाता नं०-838, सर्वे नं०-3237 रकवा 3 बिगहा 15 कट्ठा 6 धुर लक्ष्मी नारायण साकिन सैदपुर की जमीन है जिस पर की मंदिर के अलावा कोई भी व्यक्ति विक्रय या हस्तान्तरण करने की अधिकारिता नहीं रखता है। अतः प्रश्नगत भूखण्ड से संबंधित सभी बैनामा और जमाबंदी अवैध है। अतः आवेदकगण को *intervener* का आवेदन स्वीकृत किया जाता है और विपक्षीगण को आदेश दिया जाता है कि तत्काल प्रश्नगत भूखण्ड खाता नं०-828 सर्वे नं०-3237 को लक्ष्मीनारायण मंदिर सैदपुर के लिए खाली कर दें।

Thus, for the aforesaid reasons the impugned order is not sustainable hence the same is set aside and accordingly this appeal petition is disposed of.

Dictated and corrected by me.

28.3.16
Commissioner,
Saran Division, Chapra

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