

In The Court of Commissioner, Saran Division, Chapra

**B.L.D.R. Appeal No. 149/2011**

**Krishna Deo Yadav & ors.**

**Vrs.**

**Atul Kumar Srivastava**

**ORDER**

31.04.2016-

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Case No. 21/2011-12 on 10.09.2011.

The brief facts of the case are that one Atul Kumar Srivastava S/o Late Lallan Bihari Srivastava R/o Village- Bari Rai Bhan, P.S.- Hathua, Dist- Gopalganj had filed a case, seeking relief to the extent that the earlier order passed at the level of C.O. Vijaypur in Dakhil-kharij case No. 50/1997-98, order dated 28.06.1997 and Dakhil Kharij Case No. 107/1997-98 order dated 19.07.1997 be set aside under the relevant provision of the BLDR Act- 2009. Thereafter, notices were issued to the O.Ps. by the DCLR and who in turn filed their rejoinder. In the meantime, the petitioner, before DCLR (present respondent) filed a petition stating therein that, although, the dispute in the case relates to entry in revenue records and such kind of dispute can be resolved by the competent authority under the provisions of BLDR Act in as much as power is vested to him, nevertheless, if the authority finds any difficulty in entertaining the matter under the BLDR Act, his said petition can be treated as Dakhil-Kharij Appeal and the same can be disposed of under the appellate jurisdiction. Thereafter, the learned DCLR heard the case under the provision of BLDR Act- 2009 allowing the petition filed for such consideration and finally vide order dated 10.09.2011 disposed of the case through a detailed and reasoned order set aside the order passed by C.O. Vijaypur in Dakhil-Kharij record No. 50/1997-98 on 28.06.1992 and in record No. 107/1992-98 on 19.07.1997 and also directed the court below to delete the jamabandis No. 832 and 846 existing in the name of O.Ps. and also directed for reviving the Jamabandi No. 80. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this court.

Heard the learned counsel for the parties.

The learned counsel at the very outset of his argument submitted that in the instant case the dispute relates to one bigha 12 katha 11 dhur of land bearing plot No. 342, Khata No. 93, sikami Khata No. 54 situated in village- chounukha Anchal Vijaypur, Dist- Gopalganj and for which earlier two separate jamabandies were created in the year 1997-98 in the name of different persons for different areas of land in revenue records which has been cancelled by the learned DCLR.

The learned senior counsel also submitted that the respondent had filed jamabandi cancellation case against the appellants before the DCLR under the provisions of BLDR Act- 2009. He further argued that the respondent had filed the case as an appeal against the order of C.O. Vijaypur, passed in two different records on two different dates in favour of the different persons as entry made in year 1997-98 and after about 14 years but one single case was filed before DCLR as such the said case itself was neither maintainable in law nor on facts rather the same was fit to be dismissed. He further submitted that when there is specific provision of filing Mutation Appeal against the order of C.O. before the DCLR within 30 days of the order, the said case was filed before the DCLR after 14 years under the provision of BLDR Act- 2009 and the said case was not maintainable. The learned counsel further assailed the impugned order and submitted that the said order has been passed without considering the material facts of the case. He also submitted that the claim made by the respondent before DCLR was not based on evidence and was not worth consideration in view of the fact that in absence of any cogent evidence or proof that sikamidar died prior to 1938, the respondent is the legal heir of the khatiyani raiyat and he came in possession of the disputed land after the death of khatiyani raiyat. He further submitted that the appellants had filed a petition before the DCLR for local inspection of the disputed land, so as to ascertain the clear position about the actual physical possession, but no order was passed and ultimately the final order was passed in which the two earlier orders of C.O., Vijaypur was set aside. The learned counsel lastly submitted that as the impugned order is beyond jurisdiction as such the same is fit to be set aside and this appeal petition be allowed.

The learned senior counsel appearing for the respondent strongly opposed the arguments advanced by the learned counsel for the appellants and submitted that the impugned order is just and proper having no illegality so the same is fit to be upheld. He further argued that it is entirely a wrong plea taken by the appellant that the said case before DCLR was not maintainable as the said case was related with the cancelation of jamabandis. But the fact is that soon after filing the case bearing No. 21/2011-12 before DCLR, the present respondent as petitioner before DCLR, had filed a petition dated 17.08.2011 that if the court finds any legal hitch in entertaining the case, in that case the petition filed earlier bearing No. 21/2011-12 be treated as a case filed under the provisions of BLDR Act and the learned DCLR after allowing the said petition finally passed the order as such the said order can not be said to have been passed without jurisdiction. He further submitted that the appellant's case is basically relates to their claim of sikami right which can be decided under the BT Act. He also submitted that the appellants got their name mutated on the basis of their alleged claim of sikami right and the concerned block authorities without appreciating the facts and law involved in the case passed order in favour of the appellants. He also submitted that kashtakari Khata No. 93 under which sikami Khata No. 54 and sikami plot No. 342 covering area of 1 bigha 12 katha 18 dhur was recorded in R.S. record in the name of kushan Mallah as sikamidar and kushan Mallah died in 1930 and the original kashtakar came in possession over the land bearing plot No. 342 as under the old law sikami right was not heritable. He also argued that the appellants had if any grievances against the claim of this respondent they can take recourse before civil court. He lastly submitted that the learned DCLR has committed no illegality after setting aside the order dated 28.06.1997 and 19.07.1997 passed by C.O. Vijaypur in Mutation Case No. 57/1997-98 and 107/1997-98 as such the impugned order of DCLR is legal, valid and fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and or perusal of the impugned order, it is quite obvious that the dispute between the parties relates to some jamabandis created in the year 1997-98. The appellants claim is that the said disputed land was inherited by them as the descendent of the sikamidar whereas the respondents claim is that the said land came in possession of the khatiyani raiyat after the death of sikamidar but the jamabandis were wrongly created in favour of the appellants in the year 1997-98 by circle office Vijaypur without considering the relevant records and actual possession of the parties. It is also seen that the present respondent has initially approached the learned DCLR for cancellation of the said jamabandis as the DCLR is the appellate authority in such matter by invoking the provision of BLDR Act- 2009. It is also obvious that the respondent when realized that the maintainability of his said petition might be under scrutiny, he again filed a petition that his original petition be treated as appeal petition. The learned DCLR before passing the order in the matter has very ably discussed the aforementioned position in the very outset of his final order. Thus, the claim of the appellant with regard to the maintainability of the case under the provisions BLDR Act has been settled as such no dispute can be raised now. *It is also now well known that if the court has power to pass an order under the provision of any statute, the order passed by him shall not stand vitiated only by reason of the fact that wrong provisions of law has been mentioned either in the said order or in the application in terms whereof the said order has been passed, as observed by Hon'ble High Court (1993-2-BLJR- 965).* In other words it can be simply said that wrong mentioning of provision can not effect the validity of an order.

In this view of the matter, it seems that the learned court below can not be said to have acted illegally in passing the impugned order.

With the aforesaid observations, this appeal petition is disposed of.

Dictated and Corrected by me.

21-4-16  
Commissioner,  
Saran Division, Chapra

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