

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 05/2012**

Budhan Mahto

Vrs.

Bhikhari Mahto

ORDER

17.10.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in a case named "Janta Darbar Misc. case No. 67/2011 on 08.12.2011.

The brief facts of the case are that the present respondent Bhikhari Mahto S/o Late Ram Bilash Mahto R/o Vill-Manjhi Gadh Bazar, P.S. Manjhi, Dist-Saran filed a complaint petition in the Janta Darbar of D.M. Saran and subsequently a case was initiated by the learned DCLR pursuant to the direction of the D.M. In the said case, the prayer was that the land in question measuring 4 katha 10 dhur of khata No. 1273, plot No. 4356 situated in Mauza Manjhi Gadh Bazar was his purchased land upon which the present respondent is wrongly claiming his title and creating hindrance in construction of his house as such the local police station be directed to provide protection in construction of his house. The learned DCLR after hearing the case finally vide order dt. 08.12.11 restrained the present appellants (o.p. before DCLR) from entering into the said disputed land. Feeling aggrieved by the said order, the present appellant has preferred this appeal case.

Heard the learned counsel for the parties.

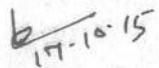
The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order is not sustainable in view of the fact that in the instant case determination of complex question of title is involved as such the DCLR has got no jurisdiction to decide the issue. He further submitted that the learned lower Court failed to consider that the appellant has acquired occupancy right in the suit land. He also argued that the learned lower Court erred in holding that no document has been filed by the appellant in support of his case whereas the appellant had filed documents in support of his case. He also argued that the appellant came to acquire the disputed land in the capacity of Bataidar and previously title suit No. 108/85 was decreed in favour of the appellant on the ground of Sikmi Bataidar. He lastly prayed for allowing the appeal.

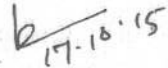
The learned counsel appearing on behalf of the respondent while supporting the impugned order, submitted that the disputed land was purchased by the mother of the respondent in 1960 and since then she came in possession and after her death her son (present respondent) is in possession. He further argued that the impugned order is just and valid having no illegality. He also elaborated in detail as to how his mother purchased the land in question and subsequently he came in possession over the same and the present appellants are creating undue obstruction in the construction of his house. He lastly submitted that the impugned order has been passed by the DCLR after considering all facts of the case and hence the said order must be upheld.

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, it is quite obvious that the nature of dispute between the parties relates to determination of their right and title over the disputed land. The appellant claims his right on the basis of alleged occupancy right accrued to him as a Sikmi Bataidar whereas the respondent's claim is based on the sale deed document by which his mother came in possession over the said land. Obviously the respective claim of the contesting parties can not be resolved or decided in a summary proceeding under the provision of BLDR Act-2009 and even the BLDR Act itself prohibits the DCLR to deal with such issues of determination of right and title of the parties. However, the learned DCLR went on declaring the right and title of the parties by holding that. " अतः संबंधित पक्षों को सुनने तथा सभी कागजातों के अवलोकन के पश्चात मैं इस निष्कर्ष पर पहुँचता हूँ कि आवेदक भिखारी महतो का खाता संख्या-1273 सर्वे नं०-4356 मौजा मांझीगढ बाजार- 4 कट्ठा 10 धूर की जमीन पर दावा सही है". It appears that the findings arrived at by the learned DCLR does not seem to be appropriate in the light of the observations made by Hon'ble High Court in the case of Maheshwar Mandal and ors. Vrs The State of Bihar and ors.

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

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra