

**In The Court of Commissioner, Saran Division, Chapra  
B.L.D.R. Appeal No. 208/2012**

**Nasimul Haque**

**Vrs.**

**Syed Hasan Mian & ors.**

**ORDER**

30-12-15 - The instant appeal is directed against the impugned order passed by DCLR, Siwan Sadar in Misc. case No. 01/2011-12 (Sayed Hasan Vrs Pervej Alam) on 03.05.2012.

The brief facts of the case are that Sayed Husain S/O Late Khijubuddin Mia R/o Mohaddinpur, at present Gopalpur, P.S.-Hussainganj, Dist-Siwan initially filed a petition before C.O. Pachrukhi for declaration of Kayami raiyat from sikmidar raiyat with respect to land recorded in khata No. 49 having plot Nos. 58 & 59 of Mauza chaksanda and the C.O. Pachrukhi recommended to DCLR Siwan Sadar for the said declaration. Thereafter, one Pervej Alam S/o Shamsuddin R/o Vill Mohaddinpur filed a objection petition before DCLR. The learned DCLR after hearing the parties finally vide order dt. 03.05.2012 approved the recommendation of C.O. Puchrukhi and declared the present respondent Syed Hasan Mian S/o Khijubuddin (petition before DCLR) as the Kayami raiyat of the aforementioned land. Feeling aggrieved by the said order of DCLR, Siwan Sadar Nasimul Haque S/o Azizul Haque, R/o Vill-Naya Bazar, Gulzar Manzil filed an appeal against the said order by making syed Hussain Mian (petitioner before DCLR) and Pervej Alam (objector before DCLR) as opposite party under the BLDR Act-2009.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that the said order has been passed without considering the material facts of the case and the appellant has not been given any opportunity for filing objection. He further submitted that the disputed land is recorded as Sikmi khata No. 45 in the name of Qutubuddin S/o Nasir, caste Jolha as stated by the respondent No.1 but the respondent No.1 is not the son of Qutubuddin. He further argued that original sikmidar died few months after R.S. and after his death the original kashtakar namely Mohmad Qashim came in possession over the said land and subsequently after his death his heirs of Sikmidar. He also submitted that earlier Mohd. Qashim filed a partition suit No. 474/02 before sub-judge Siwan with respect to the above disputed land. He also said that the although appellant filed a number of documents regarding suit land but the learned C.O. did not consider the same and recommended for approval of declaration of raiyat in favour of respondent No. 1. He lastly said that as the order passed by DCLR is illegal, improper and erroneous the said order is liable to be set aside.

The learned counsel appearing on behalf of respondent No.1 submitted that the disputed khata No. 49, plot No. 58, area 8 katha 12 dhur and plot No. 59 area 11 katha 17 dhur was entered in R.S. as sikmi and during R.S. the ancestor of this o.p. filed correction petition and khatiyan was corrected and prepared in the name of Khijabuddin the father of o.p. No. 01 and after correction of R.S. the father of the respondent went to live at Gopalpur but the said land was in his peaceful possession. He further argued that it was this respondent No. 01 who had gone to C.O. Pachrukhi for declaration of sikami raiyat to kayami raiyat u/s 48(c) and (D) of B.T. Act-1885 and the learned DCLR has passed the order after perusing all the relevant documents. He

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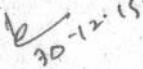
further submitted that the claim of appellant and respondent No. 02 is not tenable rather the claim of this respondent No. 1 is a valid claim and the same has been decided in his favour on the basis of relevant documentary evidence and his possession. He also submitted that the T.S. No. 603/2012 was not maintainable before Civil Court and hence the same was dismissed. He lastly submitted that this appeal petition is not maintainable before this Court hence the same is fit to be dismissed.

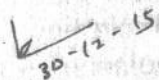
The learned counsel appearing on behalf of respondent No. 2 submitted that as soon as respondent No. 2 got the knowledge of this case before C.O. he appeared as intervener opposite party and filed objection petition before C.O. Pachrukhi and denied that the appellants and respondent No.1 had no right, title and possession over the disputed land rather he made his claim of his possession over the said land. He further argued that as a matter of fact the entire matter relates to disputed land is totally based upon determination of title and a T.S. No. 603/12 is still pending before learned sub-judge-1<sup>st</sup>-Siwan hence no relief can be granted now to either appellant or respondent No.1. He also questioned the maintainability of this case under the BLDR Act. in the light of Hon'ble High Court order in CWJC No. 1091/2013 (Maheshwar Mandal and ors. Vrs The State of Bihar).

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the contesting parties and on perusal of the impugned order, it is seen that the contesting parties are claiming their right and title over the land in question on the basis of entry made in the sikmi khata No. 25. The appellant's claim is that in the said sikmi khata, the name of his ancestor Qutubbuddin was mentioned whereas the claim of respondent No. 1 is that the earlier sikmi khata No. 49 was corrected to sikmi khata No. 25 and the name of one Khijubbuddin was entered in khata No. 25 and ever since then the father of respondent No.1 is in peaceful possession over the said land. Moreover, another claimant respondent No. 2 also claims as the rightful owner of the said land and filed a T.S. No. 603/2012 before sub-judge-1 Siwan. It appears that the learned DCLR has discussed each and every details of the case while arriving at the final finding of fact regarding claims of the parties. It is also seen from the record that T.S. No. 603/2012 has been dismissed on the ground of non maintainability as the case was related with section 48(D) of B.T. Act-1885 as observed by the Court. In fact, the learned counsel for the appellant as well as respondent No. 2 failed to support their case and they also failed to point out any specific infirmity in the said order of DCLR rather their claim mainly revolves around the genuineness of the name of the person shown in the corrected sikmi khata. It is seen that whatever alleged anomaly might have been crept in the correction of the said sikmi khata, if any, was there in the initial sikmi khata has since been removed by correction made subsequently in the said sikmi khata and in the corrected sikmi khata, the name of Khijabuddin, father of respondent No. 1 has been mentioned. Thus, I do not find any apparent flaw in the impugned order of DCLR which is a detailed and reasoned order and in accordance with the relevant provision of the B.T. Act-1885 as such no interference is required.

Accordingly this appeal petition is disposed of.

Dictated and Corrected by me.

  
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Commissioner,  
Saran Division, Chapra

  
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