

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 198/2011**

**Sheojee Turha & ors.**

**Vrs.**

**Nagendra Kumar pandey & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute Resolution case No. 034/2011-12 on 22.10.2011.

The brief facts of the case are that the present respondents No.1 Nagendra Kumar Pandey S/o Brajraj Pandey, R/o vill-Dhanauti, P.S. & circle-Kateya, Dist-Gopalganj filed a case before DCLR, Hathua wherein his prayer was that the portion of land measuring 83 decimal of plot No. 1414, khata No. 280 and which total area is 4 acre 22 decimal and over which the possession made by present appellants (o.ps before DCLR) be declared illegal and possession of the said land be delivered to him. Thereafter, the learned DCLR after hearing the parties and finally vide order dt. 22.01.2011 allowed the said case and declared the possession of the present appellant as illegal and also directed the C.O. Kateya to dispossess the illegal occupants and to ensure the delivery of possession to the petitioner. Feeling aggrieved by the said order the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order submitted strongly that the impugned order passed by competent authority, the DCLR, Hathua is bad in law as well as in facts of the case as the same is based on conjectures and surmises. He further while narrating facts of the case, argued that actually entire land of plot No. 1414 of khata No. 280 was belonging to Hathua Estate which was donate to Bhoodan yagna Committee and out of that only 35 decimal of land was settled by the Bhoodan yagna Committee in favour of one Mithu Turha on 30.06.1973 who happened to be the father of the appellants and subsequently jamabandi No. 674 was created in his favour vide Rent Fixation case No. 72/1984-85 and since then rent was paid by him and after his death his sons came in possession over the said land the land is completely agricultural in nature. He further said that the present respondent illegally sought relief of recovery of possession over 83 decimal land including 35 decimal of land in the peaceful possession of the appellant and the learned DCLR without considering the relevant documents like certificate issued by Bhoodan Committee order passed in Rent Fixation case and rent receipts issued by Govt. with respect to said land, passed the order which is illegal and fit to be set aside.

The leaned senior counsel appearing on behalf of the respondents strongly opposed the arguments forwarded by the learned counsel for the appellant and said that the impugned order is proper and valid and the appeal petition has been brought on frivolous grounds. The learned counsel further submitted that the respondent actually filed a case for confirmation of the exchange done by secretary,

Bhoodan office, Gopalganj. He further argued that the land in question was actually coming in peaceful physical possession of the respondent since the life time of his ancestor and 35 decimal disputed land was allotted to the appellants father had never been in their physical possession rather the ancestors of the respondent No. 2 had planted trees and they had amalgamated the said land with their kast land, plot No. 1679 under khata No. 164 measuring 83 decimal and it was exchanged by the Bhoodan Committee accordingly and remain revenue granted rent receipts. He also said despite being knowing all the facts relating to exchange by the Bhoodan Committee the greedy eyes of the appellants want forceful possession by dispossessing the physical possession of the respondent. He lastly said that the impugned order is well within jurisdiction of the learned DCLR, having no infirmity, hence the same is 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 on perusal of the impugned order, it is seen that the dispute between the parties basically relates to their respective claim over the different areas of land which stated to have been settled/exchanged by the Bhoodan yagna Committee. The contention of the appellant is that 35 decimal of land was settled to his father by the Bhoodan Yagna Committee way back in the year 1973 and subsequently jamabandi was opened and rent has been fixed and the said area is under their peaceful possession. On the other hand, the claim of the respondent is that he was settled with 83 decimal of land from the said big plot having total area more 4 acre than is area and he also got exchanged some part of his khatiyani land from Bhoodan Committee and amalgamated the same together. It is seen that the learned DCLR has decided the issue in favour of the respondent but contention of the appellants is that all the documents submitted by them were not taken into account while considering the case the said order is illegal. It is an admitted fact that the portion of land claimed by either parties is part of a big plot and both are settle of the Bhoodan Committee, I feel that the claim of one party can not be ignored completely and that too without glancing through the documents produced as evidence in support of claim. As I find that the impugned order of DCLR is not sustainable on this account the same can not be upheld and hence the same is set aside. The case is remitted back to the DCLR, Hathua to pass a fresh order in accordance with law after verifying the genuineness of documents produced by the parties in support of their respective claim and also after affording opportunity of hearing to the parties.

With the aforesaid observations and direction, this appeal is disposed of.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.