

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 300/2013

Baiju Prasad Sah

Vrs.

Shiv Janam Manjhi

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 40/2013-14 on 17.09.2013.

The brief facts of the case are that the present appellant Bajju Prasad Sah S/o late Chandrika Prasad R/o Vill-Lakdi Nabiganj, Dist-Siwan filed a case before DCLR, Maharajganj under the provisions of BLDR Act in which the present respondent was made as o.p. In the said case the prayer of the present appellants as petitioner was that the disputed piece of land measuring 2 katha 11 dhur was purchased by him from the descendants of rightful owner through registered sale deed from which the present respondent (o.p. before DCLR) on the basis of forged papers were trying to dispossess him from the said land as such he be restrained from doing so and in case of his dispossession his possession be recovered. Thereafter, the learned DCLR after hearing the case, finally vide order dt. 17.09.2013 held the claim of the present respondent as justified and he also ordered the concerned C.O. to initiate proceeding for cancelling of jamabandi No. 516 existing in the name of the petitioner with respect to said disputed land. Feeling aggrieved by the said order the present appellant has preferred the instant appeal petition before this Court.

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 he impugned order is bad in law and facts as the learned DCLR had no authority to decide the complicated question of right and title under the provision of BLDR Act. He further submitted that the learned lower Court below wrongly held in its order that possession of respondent was found on the disputed land during spot verification which is totally false and in fact no spot verification has been done. He further argued that the learned Court below wrongly held that the vendors of the appellant had no title and possession over the disputed land and in fact such complex question of title could not have been decided by the learned DCLR as he had no jurisdiction. The learned counsel further said that the learned Court below wrongly directed the local C.O. to cancel the jamabandi No. 516 existing in the name of the appellant this also make the impugned order illegal and beyond jurisdiction. He also said that the learned DCLR ought to have restrained the respondent from interfering in the peaceful possession of the appellant and also confirmed the title, possession of the appellant on the basis of sale deed, rent receipt and R.S. khatiyani. He lastly said that as the impugned order is beyond jurisdiction, the same is fit to be set aside.

The learned counsel appearing behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the appellant and submitted that there is nothing wrong in the order of learned DCLR as such this appeal petition is fit to be rejected. He further submitted in detail as to how the respondent came to acquire the said land and having his peaceful possession over that. He further submitted that this respondent had purchased the land in question from the landlord who had got the same by Rent decree and by partition suit No. 18/1928. He further said

that the learned DCLR found the physical possession having residential construction is continuing over the said land in his local inspection. He further submitted that the appellant on the basis of forged and fabricated records claim his title over the said land which is prima-facie illegal. He lastly said that the instant appeal petition is fit to be rejected.

Considering the facts and circumstances of the case, claims and counter claims raised by the learned counsel for the parties, material available on records and on going though the impugned order, it is seen that in the instant case the dispute between the parties relates to their respective claim over the disputed piece of land what stated by them to have been purchased by them from the rightful owner. Thus, claims are based on the so called sale deed, rent receipt and possession. Obviously the dispute relates to private land. It is seen that the present appellant had approached the learned DCLR seeking relief with respect to restrain the o.p. from dispossessing him from the said land and also for recovery of possession in case of dispossession. The learned DCLR is not competent to look into the relief sought for with respect to private land under the provision of the BLDR Act. 2009. But the learned DCLR, instead of directing the parties to approach the competent Civil Court for determination of right and title of the parties went on to decide the same under the BLDR Act. Certainly this approach of the learned DCLR can not be appreciated and upheld. In fact, the case brought before DCLR itself was not maintainable in view of the relief sought for by the appellant.

It is well established that the subject matter of adjudication under the BLDR Act. does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors The State of Bihar & ors) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.