

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 338/2014

Girdhari Sharma

Vrs.

Jaikishun Sharma & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 63/2014-15 on 06.11.2014.

The brief facts of the case are that the present appellant (petitioner before DCLR) Girdhari Sharma S/o Sheodhari Sharma, R/o vill- Lakhnaura, P.S.-Basantpur, Dist-Siwan filed a case before DCLR in which the present respondent was made as o.p. In the said case the petitioner sought relief to the extent that the land in question measuring 7 dhur, of khata NO. 240, plot No. 1926 on which the present respondent (o.p. before DCLR) forcibly started constructing work in order to grab the same as such his possession be delivered. Thereafter, the learned DCLR after hearing the case, finally vide order dt. 06.11.14 rejected the case holding that the claim made by the petitioner on the said land was not maintainable. 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 appellant at the very outset of his argument submitted that the impugned order is bad in law for the reason that the said order has been passed without considering the weight of evidence available on the record. He further made a detailed submission about the entire course of events leading to coming up of this case before this Court and also discussed in detail as to how the said 7 dhur of disputed land came in the possession of the appellant. The learned counsel further assailed the impugned order and said that the learned Court below decided the question of title by dismissing the claim of the appellant as such the order is without jurisdiction and hence fit to be set aside.

The learned counsel appearing for the respondent submitted that the present appeal as framed and filed is not tenable and liable to be rejected. He further submitted that the appellant has no valid cause of action for filing appeal because of the fact that the land in question is private land and the same is not settled land and the appellant is not the settlee of the government. He also strongly asserted that the instant appeal as well as the BLDR case No. 63/2014-15 before DCLR is totally beyond the purview of BLDR Act and on this ground also the present appeal is liable to be rejected. The learned counsel in course of his argument also referred to the relief sought for by the appellant which itself makes clear that the complicated question of title is involved in the instant case and the learned DCLR has rightly dismissed the case of the appellant as not maintainable. He lastly said that as the impugned order is valid and proper the same is fit to be upheld and this appeal petition lacking merit is fit to be dismissed.

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 quite apparent that the present appellant as petitioner, had initially approached the competent authority, the DCLR seeking relief with regard to recovery of possession over the disputed land. However, it is also obvious that the learned DCLR has rejected the claim of the appellant with respect to the disputed land on the ground that the claim of the appellant over the said land was wrong and finally held that his claim is not maintainable. In other hand it can be said that the learned DCLR went on to decide the right and possession of the parties with respect to raiyati land as non of the parties come under the purview of allottee or settlee as per the provision enshrined in the BLDR Act. In fact the learned DCLR should not have adjudicated the complex question of right and possession of the parties over the raiyati land under the BLDR Act. The learned counsel for the parties also aired the similar view during argument.

It is well settled that such a complex issue relating to determination right, title and recovery of possession can not be decided under the BLDR Act. The Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and others) on 24.06.2014 has clearly 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 and also held that complex question of title can never be decided in a summary proceedings.

For the aforesaid reasons and discussion made therein, it is clear that the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner 04/10/2017
Saran Division, Chapra.


6/10/2017
Commissioner
Saran Division, Chapra.