

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 357/2013

Shiv Pujan Singh & ors.

Vrs.

Ram Ayodhya Barai

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 05/182/2013-14 on 15.10.2013.

The brief facts of the case are that the present respondent Ram Ayodhya Barai, S/o Late Motilal Barai, R/o Vill-Sarsar, P.S.-Siwan Mufassil filed a case before DCLR, Siwan Sadar under the provision of BLDR Act-2009 in which the present appellants were made as o.ps. In the said case, the petitioner (present respondent) sought relief that the land measuring 1 katha 4 dhur which is in his possession and having his title, out of which 07 dhur of land has been illegally encroached by the o.ps (present appellants) as such his said land be measured and after that by removing encroachment his possession be delivered. Thereafter, the learned DCLR after hearing the parties, finally vide order dt. 15.10.2013 allowed the said case with a further direction to the concerned C.O. to get measure the disputed land and if any encroachment exist thereupon, the same may be removed. Feeling aggrieved by the said order, the present appellants have 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 in the instant case dispute between the parties relates to raiyati land and dispute regarding raiyati land can not be resolved under the BLDR Act. He further submitted that the learned Court below without considering the relevant facts of the case held that the appellant has encroached the land belonging to the respondent whereas the fact is that the said land is his purchased land from one Chandrama Bhagat through registered sale deed on 14.07.1972. He lastly said that as the impugned order is illegal, erroneous and without jurisdiction the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant submitted that the impugned order is just and proper. He further submitted that the appellants have illegally captured 7 dhur land of the appellant which has been purchased through sale deed in the year 1948. He also submitted that the respondent filed the case for measurement of his land alongwith some other relief like recovery of possession and whatever order passed by the learned DCLR is appropriate and within his jurisdiction. He lastly said that as the present appeal petition is lacking merit, the same 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 in the instant case dispute between the



parties relates to private land. Both parties lay their claim over the said disputed land on the basis of sale deed documents. Moreover, it is also an admitted fact by the parties that the present respondent had approached the leaned DCLR by filing a case under the provision of BLDR Act for removal of alleged encroachment after measurement and subsequently recovery of his possession. Obviously, such kind of relief can not be granted under the BLDR Act as held by the Hon'ble High Court. Even none of the parties comes under the purview of allottee or settlee. As such the case itself was not maintainable before the DCLR but the leaned DCLR went on to pass order in the said case.

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.