

In The Court of Commissioner, Saran Division, Chapra

**B.L.D.R. Appeal No. 68/2016
Laxami Narayan Yadav & ors.**

Vrs.

Chokat Choudhary

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR Hathua in Land Dispute case No. 34/2015-16 on 09.03.2016.

The brief facts of the case are that the present respondent Chokat Choudhary S/o Hirangi Choudhary R/o Vill-LakhanKhash, P.S.-Uchakagaon, Dist-Gopalganj filed a case before DCLR, Hathua in which the preset appellants were made o.ps. The case of the petitioner before DCLR was that plot No. 241 and 242 having area 34 decimal and 84 decimal respectively are recorded in khatian as Gair Mazurwa Malik Viritdan and in the possession column name of Juravan Ahir has been mentioned. Further case is that he being the descendant of the khatiyani raiyat and having the said land is in peaceful possession also and pays rent to the state. He further sought relief that the o.ps (present appellants) on the basis of Patta claim their right over the said land and they also create hindrance in his peaceful possession, as such they be restrained from making any interference. Thereafter, the learned DCLR, after hearing the case finally vide order dt. 09.03.2016 allowed the said case. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants at the very outset of his argument submitted that the impugned order is bad in law as well as illegal also in view of the fact that as complicated question of title and possession is involved in this case, the learned DCLR has got no power to pass any order. The learned counsel further said that ancestor of the appellants have been coming in possession over the said land since long over R.S. plot No. 241 and 242 according to their settlement and being settled raiyat the appellants had acquired occupancy right. He further submitted that the impugned order of DCLR is without jurisdiction as he declared the right of the respondent over the disputed land as such the said order 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 appellants are actually the encroached and they have no right to claim their possession. He further submitted that the very nature of land is Gair Mazurwa Malik and the respondent has got khatiyani right over the said land as jamabandi has also been created in his favour and they used to pay rent to the state. He also submitted that the impugned order of DCLR is just and proper and fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and



on perusal of the impugned order, it is seen that in the instant case, dispute between the parties relates to their respective claim over the land in question on one or another basis. The claim of the appellant is that the said land has been recorded in khatian as Gair Mazurwa Malik land and the said land was settled to his ancestor much before vesting of Zamindari. On the other hand, the claim of the respondent is that the said land has been recorded in khatian as Gair Mazurwa Malik britdan and in possession column the name of his ancestor has been mentioned and on that basis he has been coming in possession. Obviously the dispute between the parties relates to private land and none of them is allottee or settlee. In fact the learned DCLR should not have decided the case in view of the inherent complexity of the case brought before him for adjudication.

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.