

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 197/2016
Shiv Mangal Sah & ors.
Vrs.
Dhruvjee Bhagat
ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 01/2016-17 on 01.07.2016.

The brief facts of the case are that the present respondent Dhruvjee Bhagat S/o Nema Bhagat R/o Tandwa Kheman, P.S.-Fulwaria, Dist-Gopalganj filed a case before DCLR, Hathua under the provision of Bihar Land Dispute Resolution Act-2009 in which present appellants were made as o.ps. In the said case the petitioner (present respondent) sought relief that the disputed piece of land measuring 16 dhur, appertaining khata No. 187, khesera No. 135 situated in Mouza Barmain was a purchased land over which encroachment made by o.ps (present appellants) be freed and his possession be delivered. Thereafter, the learned DCLR issued notice to the o.ps. But none of the o.ps turned up resulting in disposal of the said case by an ex-parte order by DCLR wherein a direction was given to the o.ps to remove the possession within a month failing which C.O. Uchakagon would do the needful. Feeling aggrieved by the said order, the present appellants preferred the instant appeal.

Heard.

The learned counsel appearing for both the parties forwarded their arguments in support of their respective claim and counter claim and they also admitted the fact that dispute amongst them is related to land which is a private land.

Considering the facts and circumstances of the case, materials available on record and pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, the dispute between the parties relates to their respective claim over the disputed land on one or another basis. In fact, it appears that the dispute between the parties relates to their respective possession over the area of the disputed land. None of the parties are either allottee or settle. In view of the recent judgement of Hon'ble High Court of judicature at Patna in CWJC No. 1091/2013 (*Maheshwar Mandal & ors Vrs The State of Bihar & ors.*), the case brought before learned DCLR was not maintainable as the dispute between the parties is purely a dispute between private parties with respect to measurement of a land for which right, title etc. has not been adjudicated by a competent Court or forum under any of the six acts as enumerated in BLDR Act 2009. As such the learned DCLR was not competent to deal with such kind of dispute under BLDR Act. But the learned DCLR, instead of closing the proceeding brought before him for adjudication went on to appoint a survey knowing commissioner for demarcation of the disputed piece of land.

For the aforementioned reasons, the impugned order of learned DCLR is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.