

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 117/2013

Sheo Nath Sah & ors.

Vrs.

Aruna Pandey & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in Land Dispute case No. 39/2011-12 on 18.03.2013.

The brief facts of the case are that the present respondent Aruna Pandey W/o Dr. Janardan Pandey and her husband, R/o Muhalla-Dahiyawa Tola Prabhunath Nagar, P.S.-Chapra Mufassil, Dist-Saran filed a case before DCLR, Chapra Sadar in which the present appellants were made as o.ps. In the said case the prayer made was that the vacant area left by her surrounding her house has been illegally encroached by the o.ps (present appellants) as such said encroachment be removed. Thereafter, the learned DCLR heard the case and finally vide order dt. 18.03.2013 ordered for removal of the said encroachment. 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 submitted that the impugned order is erroneous misconceived and liable to be set aside. He further submitted in detail as to how he came to acquire the land over which he has constructed his house and the claim of the respondent is based on vagueness in the sale deed documents. He further termed the measurement report of advocate Commissioner as unscientific and the said measurement report was no way acceptable as the said measurement has not been done in his. He lastly submitted that as the impugned order is illegal and unjustified, 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 appellants said that the impugned order is just and valid as such the same is fit to be upheld. He further submitted that measurement of the disputed area has been done by the survey knowing Commissioner on scientific basis as such there is no need of any interference. He also submitted that the respondent has constructed her house over the land purchased by her and she deliberately left some area of land surrounding her house for opening windows etc and the appellant constructed his boundary wall over the vacant land just with an intention to grab the said land and also obstructing the coming of light and air. He lastly said that the learned DCLR has rightly ordered for the removal of the said boundary wall after measurement as such the said order is fit to be upheld.

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 seen that in the instant case dispute between the parties relates to alleged encroachment of private land.



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.