

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 123/2013

Ram Dulari Devi & ors.

Vrs.

Ram Lagan Prasad & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 36/2010-11 on 04.02.2013.

The brief facts of the case are that husband of the present appellant Late Ramdeo Das filed a case before DCLR under the provision of BLDR Act in which the present respondents were made as o.ps. In the said case the petitioner had sought relief that land bearing Tauzi No. 2950 unurveyed land, area 2 katha 10 dhur situated in village Baizalpur Kesho, P.S.-Sonpur be measured by a survey knowing Commissioner and encroachment thereupon be removed. Thereafter, the learned DCLR after hearing the parties appointed survey knowing Commissioner for demarcation of land and removal of encroachment but the said order could not be executed for some reasons and after the transfer of the DCLR, the officiating SDO, Sonpur abruptly dropped the case vide order dt. 04.02.2013. Feeling aggrieved by the said order of the SDO, Sonpur the present appellant, preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order passed by the officiating SDO, Sonpur is legally invalid for the reasons that he had no jurisdiction to abruptly drop the proceeding in which an earlier order was already passed by the learned DCLR. He further submitted that the appellant had actually approached the learned DCLR for measurement of land in question as well as for removal of encroachment and the learned DCLR had passed order on the said petition. But the learned SDO instead of executing the said order dropped the proceeding as such the said order is fit to be set aside.

The learned counsel appearing on behalf of the respondents while opposing the arguments forwarded by the learned counsel for the appellant submitted that all the points raised by the appellant are not proper and worth consideration. He further argued that as a matter of fact 10 dhur land has been earlier purchased by father of the respondent on 07.05.1964 and by virtue of said sale deed now he has having possession thereto. He further submitted that the learned DCLR after hearing the parties and considering the merit of case, has rejected the report of survey knowing Commissioner and further dropped the proceeding and said order can not be termed as illegal. He lastly submitted that he instant appeal petition being devoid of merit is fit to be rejected.

Considering the facts and circumstances of the case, material available on records, respective submissions made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to private land and none of them comes under the purview of allottee or settlee so as to

seek relief regarding removal of encroachment. Both parties lay their claim over the said disputed land on the basis of sale deed documents. The main issue raised by the appellant that an officer like SDO who in course of officiating as DCLR after the transfer of the then DCLR, abruptly dropped the proceeding and on that account the impugned order becomes illegal. This Court does not want to go into merit of this contention rather this Court finds sufficient reason to declare the impugned order as improper for some other reasons. In fact the learned DCLR was not competent under the BLDR Act to order for removal of encroachment from private land. Thus, the case itself was not maintainable before the DCLR.

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.


21/09/2017
Commissioner
Saran Division, Chapra.


21/09/2017
Commissioner
Saran Division, Chapra.