

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 75/2015**

**Rajeshwar Ray & ors.**

**Vrs.**

**Tuntun Kumar Yadav & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 127/2013-14 (Tuntun Kumar Yadav Vrs Shambhu Nath Dubey) on 09.09.2014.

The brief facts of the case are that the present respondent Tuntun Kumar Yadav, S/o Sanjeet Ray, R/o Vill-Nawal Tola, Circle-Dighwara, Dist-Saran filed a case before DCLR. Further case is that in the said case the relief sought for by the petitioner was that the land in question having area 4 katha 15 dhur, appertaining to khata No. 333, plot No. 787 was purchased by her wife through two sale deeds and as the demarcation boundary has been vanished so it became difficult to identify the same resulting in eruption of disputes from the boundary men and for that a survey knowing Commissioner be appointed for the measurement of the said land. Thereafter, the learned DCLR after hearing the parties ordered for the appointment of one survey knowing Commissioner, vide order dt. 09.09.2014. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal 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, assailed the impugned order by saying that the said order is beyond jurisdiction as the learned DCLR is not competent to decide the complex issue of title under the BLDR Act and in support of his said contention he also referred to section 4(5) of the BLDR Act and of the decision rendered by the Hon'ble High Court in the case of Maheshwar Mandal & ors Vrs The State of Bihar & ors. He further submitted that the appellant's claim is based upon registered sale deeds with respect to the certain areas of the land in question. He also argued that initially the respondent had filed the case before DCLR in which he also sought relief for recovery of possession besides some other reliefs. The learned counsel further submitted that the appellant had already filed a T.S. No. 1001/2013 in the Court of learned Sub-Judge, Chapra much before the filing of BLDR case No. 127/2013-14 by the respondent. He further submitted that the learned DCLR ought to have dismissed the petition filed by the respondent No.1 as the case filed by him was for demarcation of a portion of a big plot and it was not for demarcation of the whole plot. He lastly said that the impugned order is highly illegal, arbitrary, unjust, perverse against the material available on record and in utter ignorance of the settled principle of law and for that reason the said order is fit to be set aside and this appeal be allowed on merit.

The learned counsel appearing on behalf of the respondent, strongly opposed the arguments forwarded by the learned counsel for the appellant and said that the order under challenge before this Court is only an interim order passed by the learned DCLR and the said order is not a final order. He further said that the learned DCLR has only passed order with regard to appointment of a survey knowing

Commissioner as prayed for by the present respondent as petitioner and the boundary dispute is maintainable under the BLDR Act. He lastly said that since the impugned order is legally valid, the same is 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 quite obvious that the dispute between the parties relates to their respective claim over the land in question as well as the boundary what stated to have been acquired by them through registered sale deeds from the different vendors. In other words, it can be safely said that the disputed land is of raiyati nature and non of the contesting parties come under the purview of settlee or allottee as defined in the BLDR Act. What is more, the present respondent had initially approached the learned DCLR for the measurement of the land through a survey knowing Commissioner, but that was not the only relief sought for by him rather he also prayed for recovery of possession which is very much evident from the contents of the petition filed before DCLR. The learned counsel for the appellant is of the view that the case itself was not maintainable before the DCLR in view of the relief sought for by the respondent. This view can be safely accepted in the light of observation made by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors.

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 Vrs 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 observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.