

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 180/2012
Shivnath Singh
Vrs.
Bharat Singh
ORDER

The instant appeal petition is directed against the impugned order passed DCLR, Maharajganj on 02.06.2012 in BLDR case No. 47/2010.

The brief facts of the case are that Bharat Singh (present respondent), S/o Heera Singh, R/o Vill-Karsaut Tole Bodha Chapra, Dist-Siwan filed a case before DCLR, Marhaurah impleading the present appellant as respondent. Thereafter, the learned DCLR after issuing notice to the parties heard the case and finally vide order dt. 02.06.2012 disposed of the said case. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance.

The learned counsel appearing on behalf of the appellant at the very beginning of his argument, submitted that the impugned order has been passed without jurisdiction. He further argued that the learned DCLR has no right to pass any order with regard to create a road in personal land of any person. He also argued that a proceeding u/s 145 Cr.P.C. and 147 Cr. P.C. are also pending in the Court of SDO, Maharajganj. The learned counsel further submitted that plot No. 2766 and 2767 are amalgamated in which appellant got his share in the south side whereas respondent got his share towards north side and there is a canal road just east of the house of the respondents, so even availability of a road for the respondent, he wants as new road to be constructed in the share of appellant. The learned counsel lastly said that as the impugned order is extra jurisdictional order, the same is fit to be set aside.

Although, no one is present to argue on behalf of the respondent but the rejoinder filed earlier by respondent, available on record and the averments made therein has been taken into consideration for the sake of justice. The learned counsel asserted in his rejoinder that the impugned order is valid and operative and the said order has been passed after properly appreciating all the facts and law involved in the case. He further submitted that plot No. 2766 and 2767 is the ancestral land of the parties and both have got their respective share and the land falls in the share of respondent as well as nature of land is Dih basgit has been reported by Karmachari and subsequently found true by the C.O. The learned counsel also said that the points raised in the ground of appeal petition are based upon imagination and it has been wrongly alleged that respondent No. 2 Bharat Singh has got a road just east of his house and there existing a canal road so no new road can be carved out. He lastly submitted that the impugned order is valid as such the same is fit to be upheld.



Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to their respective claim over the land whose very nature is Dih-basgit and also stated to have been their ancestral land. Furthermore, the case brought before DCLR for carving out a road in the said disputed land. Obviously such kind of dispute can not be resolved under the BLDR Act as held by Hon'ble High Court in the case of Maheshwar Mandal & ors Vrs The State of Bihar & ors.

In view of the aforementioned reasons, the impugned order of DCLR is not sustainable and hence the same is set aside and accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.