

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

**B.L.D.R. Appeal No. 76/2013**

**Shaileshwar Prasad & ors.**

**Vrs.**

**Sadhu Mahto & ors.**

**ORDER**

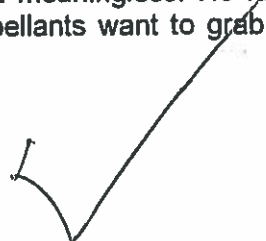
The instant appeal petition is directed against the impugned order passed by DCLR Sonpur in Land Dispute case No. 07/2011-12 on 07.02.2013.

The brief facts of the case are that the present respondent No. 1, Sadhu Mahto, R/o Ram Nath Mahto & ors R/o Vill-Chaknoor, P.S.-Dighwara, Dist-Saran filed a case before DCLR, Sonpur under the provision of BLDR Act-2009 in which the present appellants were made as o.ps. In the said case, the relief sought by the petitioners (the present respondents) before DCLR that the disputed piece of land appertaining to khata No. 878, Survey plot No. 1993 having area 3 katha 4 dhur 10 dhurki was his purchased land from which 7.47 dhur land has been encroached by the o.ps (present appellant) and the said encroachment has been found during the measurement of a survey knowing Commissioner. His further prayer was that the structure existing the said land be removed and the measurement report of survey knowing Commissioner be approved. Thereafter, the learned DCLR after hearing the parties finally vide order dt. 07.02.2013 held that as per the report of survey knowing Commissioner there was encroachment and he also ordered for removing the structure within 30 days failing which the structure would be removed by C.O. and O.C. of Dighwara P.S. Feeling aggrieved by the said order the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants, while assailing the impugned order, submitted that the learned lower Court wrongly passed the order for removal of alleged encroachment as the said structure is standing on the exchanged land of appellants and the respondents had no right or title over the exchanged land. He further submitted that learned DCLR should not have passed order when the question of title was raised by the either of the parties during the proceeding of the case. In fact DCLR had no jurisdiction under the BLDR Act to decide the complex question of right and title. He also submitted that the learned DCLR should have directed the parties to approach the competent Civil Court for the adjudication of the dispute. The learned counsel further submitted in brief as to how the dispute arose between the parties once the question of oral exchange of 5 ft. wide land to be left by both the parties as per their convenience for the ingress and outgress as a common path. He further submitted that as per the terms of oral exchange both parties came in possession and a Panchnama was also executed on 07.07.2011 between them as both parties are the purchaser of equal area of land from the same plot. The learned counsel also argued that the learned Court below wrongly relied upon the respect of survey knowing Commissioner as the said report was wrong, illegal, unspecific, collusive and superficial. He lastly said that as the impugned order has been passed is beyond jurisdiction of the learned DCLR, as per the provision of BLDR Act, the said order is fit to be set aside.

The learned counsel appearing on behalf of the respondent, submitted that the all the points raised by the appellants are incorrect and meaningless. He further argued that both parties are purchaser of the said plot and the appellants want to grab the said land by



constructing a wall and also encroached the part of his land. He further argued that the encroachment was proved in the measurement report of the survey knowing Commissioner. He also submitted that the learned DCLR has passed a proper order as such the same 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 quite obvious that the dispute between the parties relates to alleged encroachment over the private land. The claim of the appellant is that there was an oral exchange of 5 ft. Wide land between the parties and subsequently a Pachnama was also prepared for the said exchange but now the respondents have set up a story of alleged encroachment which is legally not justified. On the other hand, the claim of the respondents are that they had purchased 3 katha 4 dhur 10 dhurkee out of which 7.47 dhur land has been encroached by the appellants which was also found after measurement by the survey knowing Commissioner. It is also seen that the present respondent had initially approached the learned DCLR, under the BLDR Act-2009 seeking relief with respect to removal of encroachment. and confirmation of the measurement report of survey knowing Commissioner. It is almost admitted fact by the parties that relief sought for before the learned DCLR, under the BLDR Act could not have been adjudicated as he was not competent to decide the question of right and title pertaining to private land. Thus, it appears that the case itself was not maintainable before the DCLR as he had no jurisdiction to decide the removal of so call encroachment, if any, from the 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.