

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 205/2014

Hazarat Ali & ors.

Vrs.

Sukh Nandan Singh & ors.

ORDER

08.09.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Sonepur in BLDR case No. 91/2013 on 11.02.14.

The brief facts of the case are that the present respondents R/o of Vill-Akbarpur, P.S.-Dariyapur, Dist-Saran filed a case before DCLR, Sonepur for measurement of 1 katha 5 dhur land in western side by excluding 3 katha 10 dhur from plot No. 281 of sikmi khata No. 12 whose total area is 14 katha. Thereafter, the learned DCLR after hearing the parties finally vide order dt.11.02.2014 appointed a survey knowing Commissioner for the said measurement. Feeling aggrieved by the said order, the present appellants have preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted that the learned lower Court was not competent to decide the matter in respect of the whole area of disputed plot as well as in respect of acquired portion of the same and rest land left amongst Sakadeo Mahto and Dina Nath Mahto. He further argued that the respondents claimed before the DCLR that only 4 katha of land was acquired by Govt. for construction of Road and bandh but actually 7 kathas of land was acquired by the Govt. for the road and bandh and now the remaining area comes out to be 7 katha only out of which the two brother partitioned the same as their half share of 3 katha 10 dhur each. He also submitted that the heirs of Sakaldeo Mahto sold his 3 katha 10 dhur from the eastern half portion to Dharmasheela Devi on 13.01.2004 and the heirs of other brother Dina Nath Mahto also sold their share of 3.10 dhur to different persons. Now no land is left on the spot vacant to as mentioned as both brother share have been sold out. He further argued that the appellants are the purchaser from the rightful owner of the said plot and are in possession over the same and this respondent has no possession over any portion of the said land. He also submitted that if the respondent No. 2 wants any piece of land itself to be carved out then he has only option to file partition suit against the vendees of the land and the Civil Court only can find whether any inch of land is left in the disputed plot to be measured or not. He lastly submitted that as the dispute between the parties involves complex question of determination of share, the learned DCLR has no right to decide share so the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents submitted that both parties admit that the total area of plot No. 282 of Khata No. 12 is 14 katha

and having no dispute regarding the ownership. He further submitted that essentially the dispute between the parties is that up to what extent of actual land remain on spot after construction of bandh and road. The claim of the appellant is that 7 katha was acquired for the same whereas the respondents claim is that only four kathas was acquired by Govt. He further argued that actually 10 katha of land remained after acquisition and out of which the respondent wants to get his share of 1 katha 5 dhur to be demarcated from the same. He further argued that there is no illegality in the order passed by the learned DCLR and resolving of disputes relating to boundary is within the jurisdiction of the authorities. He lastly submitted that the impugned order having no infirmity or illegality may be upheld.

Considering the facts and circumstances of the case, material available on record and on perusal of the written arguments and impugned order it is seen that the present respondent had filed a petition before the learned DCLR with a prayer for demarcating his share of 1 katha 5 dhur from the said big plot of 14 katha. However, the crux of the dispute lies somewhere else in view of the fact that some portion of that big plot has been acquired by the Govt. in past for construction of bandh and road and this fact is admitted by both the parties. The dispute between the parties hinges on the point as to what actual area of land was acquired in the past. The appellant claims that area of 7 katha has been acquired for road and bandh leaving only 7 katha which was partitioned by the legal heirs and subsequently sold out to different persons and virtually no land exist so that the respondent can claim for measurement. But the claim of respondent is that only 4 katha of land was acquired by the Govt. for road and bandh and of remaining 10 katha it was partitioned between Dina Nath Mahto and Sakaldeo Mahto as 5 katha each and since only 3 ½ katha has been sold by descendants of Sakaldeo Mahto, still 1 katha 5 dhur remains on spot. Obviously the dispute is not as simple as it appears to be. In fact, the basic question remains to be solved as to how much land of that plot has been acquired by Govt. for bandh and road. This can certainly be verified from the official record and it seems to be inevitable in order to arrive at a correct assessment and for which firstly the measurement of bandh and road seems to be essential. From the impugned order it is seen that the learned DCLR relying on the claim of the respondent ordered for measurement which does not seem to be proper and valid order. The crucial portion of the plot to be measured first is the existing bandh and road and only after that the portion demanded by the claimant be measured in presence of all parties.

Thus, for the aforesaid reasons, the impugned order of DCLR is not sustainable which is set aside accordingly. Further, the learned DCLR is directed to get measured, the portion of road and bandh first existing in the said plot by a Aanchal Amin in presence of C.I. and C.O. of Dariyapur circle and only after that land of private persons be measured in presence of all parties.

With aforesaid direction this appeal is disposed of.

Dictated and corrected by me.

8.9.15
Commissioner,
Saran Division, Chapra

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