

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

**B.L.D.R. appeal No. 185/2011**

**Hafijan Khatoon**

**Vrs.**

**Badsah Alam**

**ORDER**

12-08-2015 - The instant appeal application is directed against the impugned order passed by DCLR, Hathua in BLDR Case No. 41/2011-12 on 29.09.2011.

The brief facts of the case are that the present respondent Badsah Alam S/o Late Ash Mohammad R/o Village- Mirganj Harkhauli Purab Tola, P.S.- Mirganj, Dist- Gopalganj had filed a case before DCLR by making the present appellant Hafijan Khatoon W/o Late Israil Miyan and Shakil Ahmad as respondent. In the said case his prayer was that the present appellant has encroached his land measuring three dhurs of Khata No. 533, Plot No. 2653. The total area of the said land is 1 Katha 7 dhur as per Khatiyani but from map it is 1 Katha 11 dhur, from which the said illegal possession be removed. Thereafter, the learned DCLR after issuing notices to the present appellants (respondent before DCLR) heard the matter and finally vide order dated 29.09.2011 allowed the case in favour of the present respondent (petitioner before DCLR) and also directed the C.O. uchakagaon to remove the illegal possession from Plot No. 2653 as per measurement report of Anchal Amin in respect of said land. Feeling aggrieved by the said order, the present appellant has preferred this appeal case before this court.

Heard the parties.

The learned counsel appearing on behalf of the appellant after explaining the facts of the case submitted that the learned court below has committed serious error, legal and factual without going in to the merits of the case. He further submitted that the learned DCLR ought to have enquired about the factum of possession and situation of the disputed land before passing the order and he should have also held that the O.P. No. 1 has got his house in Plot No. 2658 and not in Plot No. 2657 and Plot No. 2653 is far away from Plot No. 2658. He further argued that from the perusal of the sale deed of O.P. No. 1 it transpires that purchase was made by her out of Plot No. 2653 only and not from Plot No. 2657 and he should have not believed the report of Amin which is totally different and differs from the revenue map. The learned counsel further submitted through his written arguments that section 4 of the BLDR Act does not empower the competent authority to entertain private land dispute and in this connection he also referred the reported judgment of Hon'ble High Court (2015(1) PLJR, 823). He also pleaded that the learned court below has exceeded its jurisdiction to pass impugned order which requires to be intervened by this court as such the impugned order be set aside.

The learned Counsel appearing on behalf of the respondent submitted that the respondent purchased the land measuring 9 dhur from disputed Khata No. 533 adjacent to his residential house from Radha Choubey through registered sale

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deed in the name of his wife Motibul Khatoon. He further submitted that actually he has got only 7 dhur 15 dhurki as this was the share of Khatiyani raiyat although, it was mentioned as 9 dhur in the sale deed document. He also pleaded that out of which 2 dhur and 1dhur of land have been encroached by the present appellant and as they did not remove the said encroachment even after repeated request he had to file a case before DCLR for removing the encroachment. He also submitted this appeal has been filed only with a view to harass the respondents. He lastly submitted that the impugned order of DCLR is based on scientific measurement and the said order is just and proper as such the same be upheld.

Considering the facts and circumstances of the case, material on records and on perusal of the impugned order as well as the claims and counter claims made by the learned counsel for the parties, it appears that the dispute between the parties relates to their possession over the disputed piece of land. Both parties claim that there is variation in the actual land area from what has been mentioned in the Khatiyani. Both the parties justify their possession over the disputed land. Thus it appears that the nature of dispute between the parties basically relates to possession over the disputed land and such this kind of dispute can not be decided under the provisions of BLDR Act. The appellant's counsel is also of the view that issue relating to possession and encroachment over private land is out side the purview of the BLDR Act. In support of this plea he also drew the attention of this court towards the recent judgment of the Hon'ble High Court in CWJC No. 22533/2013, Kamta Prasad Singh & Ors. Vrs. The State of Bihar and Ors. wherein it has been held that issue of title and possession has clearly been kept outside the purview of the Act and competent authority over-stepped his jurisdiction to enter into the issue of title and possession while resolving disputes under the BLDR Act. Thus, the impugned order of DCLR, Hathua is not sustainable in the light of the observation made by the Hon'ble High Court as mentioned above.

For the aforementioned reasons, the impugned order of DCLR, Hathua dated 29.09.2011 is not sustainable and hence the same is set aside.

Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.

*[Signature]*  
12.8.15

Commissioner,  
Saran Division, Chapra

*[Signature]*  
12.8.15

Commissioner,  
Saran Division, Chapra