

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 341/2013

Ram Nath Singh.

Vrs.

Ram Babu Prasad & ors.

ORDER

19-8-2015 The instant appeal is directed against the impugned order passed by DCLR, Sadar Chapra in BLDR case No. 66/2012-13 on 05.09.13.

The brief facts of the case are that the present respondent Ram Babu Prasad, S/o Late Motilal Sah, R/o Vill-Bishunpura, P.S. Chapra mufassil filed an application before DCLR, Chapra Sadar by making present appellant as o.p. In the said application his prayer was that a piece of land measuring 1 katha 10 dhur, appertaining to khata No. 1017, plot No. 4131, 4132 over which his residential house stands and part used as courtyard in which part of the land from southern side has been illegally encroached so the same be removed. The learned DCLR, although issued notice to the o.p. but he did not turn up as result the said case was disposed of by an Ex-parte order dt. 05.09.13 wherein he held that the present appellant has encroached some land by constructing wall and also directed to vacate the said land. Feeling aggrieved by the said order, the present appellant has preferred this appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel for the appellant submitted that the impugned order is not maintainable both on fact and law as no notice was served in the matter prescribed under Rule 8 of B.L.D.R. Rule-2010. He also submitted that the order passed by DCLR is without jurisdiction. The learned counsel further submitted that the respondent is neither allottee nor settlee hence this petition was not maintainable and in support of that submission he also filed the copy of the reported decision of Maheshwar Mandal & ors. Vs The State of Bihar & ors (CWJC No. 1091/2013). He also argued that the respondent is neither allottee nor settlee but he is a purchaser of the disputed land so his petition was not maintainable under the BLDR Act as such the impugned order is fit to set aside.

The learned counsel for the respondents while supporting the impugned order of DCLR, submitted that the said order is proper and valid as such the same be upheld. He further submitted that in the past also he filed a case vide case No. 28/2011 before DCLR for demarcation of his land and during that time after measurement, stone was fixed on all four corners in presence of the appellants who also agreed with the said measurement. But later on after the submission of report by survey knowing pleader commissioner his intention was changed and he constructed brick wall close to his house only to obstruct his exit. He further argued that the impugned order of DCLR is in accordance with the provisions of BLDR Act-2009 so the same be confirmed.

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Considering the facts and circumstances of the case, material available on records, pleading advanced by the learned counsel for the parties and on perusal of the impugned order, it appears that in the instant case, the dispute between the parties relates to boundary. The respondent's claim is based on the fact that the appellant has constructed a wall just to block his exit road parallel to his land even after his land was demarcated after measurement vide an earlier order of DCLR in a demarcation case. The appellants plea is that this case was not maintainable before DCLR as the respondent is neither settlee nor allottee of the disputed land. But it appears that there is no dispute between the parties with regard to right/title. The dispute simply relates to boundaries and obviously to settle such disputes demarcation is very much required.

It is well established in law that such a demarcation is very much permissible under the BLDR Act. Hence there is no infirmity in the order of demarcation by the DCLR passed earlier in case No. 28/2011 and the impugned order seems to be in continuation of the same as such the same is upheld and this appeal is accordingly rejected.

Dictated and Corrected by me.

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19-8-15  
Commissioner,  
Saran Division, Chapra

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Commissioner,  
Saran Division, Chapra