

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No.128/2012

Bhagwati Kuar

Vrs.

Umashankar Singh & ors.

ORDER

65-65-2016 - The instant appeal application is directed against the impugned order passed by DCLR, Chapra Sadar in a case title as परिवार सं०-56/2011 (Bhagwati Kuar Vrs Umashankar Singh) on 26.03.2012.

The brief facts of the case are that the learned DCLR, Chapra Sadar initiated a case under the BLDR Act following the complaint petition filed in the Janta Darbar of Hon'ble chief Minister, received by him from Jan shikayat cell of D.M. Saran vide letter 2018 dt. 08.12.2010. In the said complaint petition the complainant Bhagwati Kuar W/o Late Nand Kumar Singh R/o Vill-Rampur Itawa, Block-Garkha, Dist-Saran had alleged that survey plot No. 1232 and 1235 of khata No. 174 having total area 1 bigha 11 katha was her ancestral land upon which road and Bandh were being constructed and when she opposed on the said construction work, she was manhandled by Umashankar Singh. Thereafter, the learned DCLR after issuing notices to the parties heard the case and after perusal of reports of the authorities finally held that whatever construction works were being carried out the same was on the existing bandh and he accordingly rejected the said complaint petition vide order dt. 26.03.2012. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted in detail about the whole course of events leading to coming up of this case in appeal before this Court. He further said that plot No. 1232 and 1235 of Mouza Sri Rampur Itwa is the raiyati land of the appellant having her possession over that and the said land has not yet been acquired by the state and even after that the present respondent Umashankar Singh had started constructing a road over the same under PMGSY Scheme. He further submitted that even after opposition of the appellant the said work was not stopped, the appellant approached the Janta Darbar of Hon'ble Chief Minister. He also submitted that the learned DCLR without making any inquiry by himself relied on the report of Anchal Amin and C.O. Garkha and rejected the appellant complaint petition as such the impugned order is legally incorrect. It is also submitted by the learned counsel that whatever objection filed by the appellant was not considered at all by the learned DCLR and the impugned order has been passed. He also submitted that in the interest of justice, the learned DCLR, ought to have looked in to the findings of the then Collector, Saran who had found the claim of the appellant as true during his personal inspection of the construction site. The learned counsel lastly said that as the said construction of the road has been carried out in the private land of the appellant without obtaining her consent and subsequently rejection of her claim by DCLR is highly illegal as such the said order is fit to be set aside.

The learned senior counsel appearing on behalf of the private respondent submitted that this appeal petition itself is not maintainable under the BLDR Act. He further submitted that the respondent as a contractor carried out the construction work under PMGSY Scheme over a bandh which is in existence for more than 100 years. He also submitted that in

past the appellant had filed a complaint before the Collector, Saran and at that time the said bandh was measured by the Anchal Amin and it was on the report of local C.O. the road and bridge were constructed. He lastly submitted that this private respondent is at no fault as the said construction was carried out after sanctioning of the scheme by the concerned deptt. As such the present case against him is fit to be dismissed.

The learned Govt. Pleader appearing on behalf of the state submitted that the appellant initially filed a petition before learned DCLR, Sadar Chapra for demarcation of her lands, bearing plot No. 1232 & 1235. He further submitted that the Anchal Amin in his report mentioned that no road was being made on plot No. 1232 & 1235 and at that time no objection was filed by the appellant against that report and the BDO, Garkha also reported that appellants had no possession over the bandh's land which is approximately 80 years old and road was being made on the said bandh. He further submitted that previously the said bandh was being used as road which was constructed over the said bandh prior to flood of the year 1975. The learned G.P. further argued that the petitioner should have filed civil suit if she has any grievances. He lastly submitted that this court may direct the C.O., Garkha to fix pillars over the disputed plots No. 1232 & 1235 in presence of appellant as per measurement submitted by Anchal Amin so that the grievances of the appellant may finally be resolved.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that the dispute in this case mainly relates with the construction of road by the contractor under the Govt. Scheme over the private land of the appellant as stated by her in her complaint petition. However, the private respondent, the contractor denies the same on the ground that he has simply carried the construction work over the dilapidated bandh which has been in existence for more than 100 years on the same place and same is being used by general public for movement and this fact has been corroborated during the measurement of the said land by Anchal Amin and C.O. Garkha. The learned G.P. on the other hand, is of the view that the said plot No. 1232 and 1235 needs to be demarcated by fixing pillars as per the measurement report submitted earlier by the Anchal Amin with respect to the said plots. Thus, it appears to me that the view forwarded by the learned G.P. is worth consideration in the present case to resolve the dispute between the parties which is brewing for quite some time and the same also seems essential for the reason that the dispute essentially involves regarding the identification of the actual area of the plots belonging to a private person and nearby which a public road has been built under Govt. scheme.

Thus, for the aforementioned reasons, the impugned order is set aside. Furthermore, C.O. Garkha is directed to get fix pillars over the disputed plot Nos. 1232 and 1235 in presence of the appellant as per the measurement report of the above plots submitted by the Anchal Amin earlier.

With the abovementioned observations and directions, this appeal petition is disposed of.

Dictated and Corrected by me.

5.5.16
Commissioner,

Saran Division, Chapra

5.5.16
Commissioner,

Saran Division, Chapra