

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 294/2012

Shambhu Sharan Mishra

Vrs.

Md. Walil & ors.

ORDER

10.08.2015-. The instant appeal application is directed against the impugned order passed by DCLR, Sonapur in Land Dispute case No. 53/2011-12 on 10.09.2012.

The brief facts of the case are that the present respondent Md. Wakil, S/o Late Abdul Subhan, R/o Vill-Kakrahat, P.S.-Derni, Dist-Saran filed a case before DCLR, Sonapur with a prayer for measurement and demarcation of his land of 17.5 dhur of plot No. 320 khata No.1129 which situated in Mouza Derni, Anchal-Dariyapur, Dist-Saran which has been left vacant and as he apprehended the readiness of the present appellant to encroach the same. In the said case the present appellants were made as Ops. Thereafter, the learned DCLR vide order dt. 10.9.2012 allowed the case and ordered for appointment of a survey knowing Commissioner to get demarcate the said land and if he found any kind of construction and dispossession over the said land he would have to send a clear report so that further action be taken in the matter in accordance with law. Feeling aggrieved by the said order the present appellant has preferred this appeal.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order is without jurisdiction and as such the same is erroneous and fit to be set aside. He further argued that the total area of plot No. 1129 is one bigha and plot 1356 is 10 katha 4 dhur which were auctioned purchased by landlord, Hari Mishra in Execution case No. 1911/1935 and came in possession. He further elaborated how the descendents sold their respective share to others in order to prove that in the instant case there involves adjudication of complex question of title and as such DCLR was not competent to decide the said case. He also argued that previously in some cases it had been ordered that competent authority has got jurisdiction under the BLDR Act. to partitioned the plot but such orders are against the decision reported in 2014(3) PLJR page 281 and para-27 of the said judgement makes it very clear that under the Act only those lands can be partitioned which are claimed as a settlee/allotee under the Act mentioned in schedule-1 of BLDR Act. He also submitted that a particular plot can not be measured and demarcated. He lastly said that the impugned order be set aside.

The learned counsel appearing on behalf of the respondent submitted that the learned DCLR after hearing both the parties held that the land has been encroached

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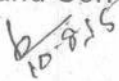
by the present appellant and it was ordered to remove that. He further argued that the survey knowing Commissioner was appointed who visited the spot got and got measured the land and found that 5 dhur 15dhuki has been encroached by the present appellant but he could not fix the pillar due to obstruction by appellant on the spot.

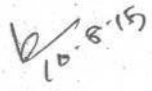
Considering the facts and circumstances of the case, material on records and on going through the impugned order, it is seen that the present respondent had approached the competent authority, the DCLR under the relevant provision of the BLDR Act-2009 to get measure and demarcate his vacant land with an apprehension that the same might be encroached by the appellant. The learned DCLR after hearing the parties and considering their respective claims and on finding that the issue can be settled only through demarcation, he accordingly ordered for appointment of a survey knowing commissioner to get measure the said dispute land and also with some other direction. The relevant portion of the said order is quoted herein below " अतः प्रतिवादी द्वारा प्रस्तुत आपत्ति को अस्वीकृत करते हुए वादी द्वारा याचित अनुतोष को स्वीकृति प्रदान की जाती है मापी एवं सीमांकन हेतु सर्वे जानकार अधिवक्ता श्री राम भगत सिंह को नियुक्त किया जाता है। सर्वे जानकार अधिवक्ता मापी एवं सीमांकन के पश्चात प्रश्नगत भूखण्ड पर निर्माण का बेदखली स्पष्ट हो तो इस संबंध में स्पष्ट प्रतिवेदन देगें ताकि अग्रतर नियमानुसार कार्रवाई की जा सके"।

The operative portion and the last sentence of the order itself shows that the said order is not final order rather the same is an interim order and the final order was to be passed after the receipt of the report from survey knowing Commissioner. Thus, it is seen that in the instant case an interim order has been brought under challenge in appeal which is forbidden under the relevant section of the BLDR Act. The relevant section of the Act has provision only for appeal against a final order of the competent authority.

For the aforementioned reasons, this appeal application is dismissed for want of maintainability.

Dictated and Corrected by me.


Commissioner,
Saran Division, chapra


Commissioner,
Saran Division, Chiapra