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In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 185/2012

**Mohd. Badsah
Vrs.**

Jafar Imam & Ors.

ORDER

20.04.2016 - The instant appeal petition is directed against the impugned order passed by Addl. Collector, Gopalganj in a Case named as विविध नापी वाद संख्या- 01/2012.13 on 03.07.2012.

The brief facts of the case are that the present respondent Jafar Imam, R/o Village- Jagmalwa, P.S.- Thawe , Dist- Gopalganj filed a petition before Addl. Collector, Gopalganj for measurement of land remaining vacant in between plot No. 560 and 561 and also of the eastern part of plot No. 560 which touches the road on the plea that his neighbor Md. Badsah is bent upon on encroaching the Govt. road which is in immediate north of plot NO. 561 by erecting pillar and wall. Thereafter, the learned DCLR ordered for deputation of one Ramashankar Singh, Amin, Land Acquisition Office, Gopalganj for the measurement of the said land and also directed that the said measurement be done on 11.06.2012 and report thereof be submitted before him on 12.06.2012 along with the case record. In compliance to the said order, the concerned Amin visited the spot but measurement could not be done as both parties agreed that measurement work may be done on 2.07.2012. Then on 02.07.2012 the measurement work was carried out in presence of the private Amin of the parties and a report to this effect was submitted before the Addl. Collector, Gopalganj on the same day and thereafter, the Addl. Collector closed the proceeding vide order dated 03.07.2012 holding that the measurement report of Anchal Amin , Trace map and Najari maps have been received and the same are available on record. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal petition under the BLDR Act.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order of Addl. Collector, Gopalganj is illegal and arbitrary as the same has been passed without giving any opportunity to the appellant to file any objection on the said report of Anchal Amin and even the said measurement was also done in his absent. He further assailed the impugned order and argued that the learned lower court below has wrongly appreciated the report of the Anchal Amin which itself was a forged and fabricated report. He further submitted that the learned court below without taking legal steps in the matter while considering the report of Anchal Amin, confirmed the same which itself makes the said report improper and illegal and as such the said impugned order is fit to be set aside. b

The learned counsel appearing on behalf of the respondent while strongly opposing the arguments advanced by the learned counsel for the appellant, submitted that the said measurement by the Anchal Amin was done in presence of the private Amin engaged by the contesting parties as such this is entirely a wrong plea that the said measurement has been done in his absence. He further challenged the maintainability of this appeal petitioner under the BLDR Act on the ground that the Addl. Collector has not passed the order under the BLDR Act as such no appeal can be preferred under the BLDR Act against an order passed in Misc. Case under different provision of law. The learned counsel further submitted in detail as to how this case was initiated before Addl. Collector, Gopalganj on the application filed by the respondent for measurement of public road which was encroached by the present appellant. He lastly submitted that the impugned order of Addl. Collector Gopalganj is just and proper as the same has been passed after considering the report of Anchal Amin and further there is no scope for this court to make any interference in the said order under the BLDR Act so this appeal petition deserves to be dismissed on the point of maintainability.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it appears that initially the case before Addl. Collector, Gopalganj has been initiated on the application filed by the present respondent for measurement of public road as well as vacant area of some adjoining plots like plot No. 560 and 561. It is also seen that the Anchal Amin has measured the said plots in presence of the private amins of the parties and thereafter the Addl. Collector has confirmed the said measurement report and closed the proceeding. Apparently, I do not find any impropriety in the said order of Addl. Collector. However, the important issue before this court is to decide as to whether, the said order of Addl. Collector should have been challenged before this court under the appellate jurisdiction under the provision of BLDR Act- 2009 or not. I find that the said impugned order can not be challenged in appeal under the provision of BLDR Act in absence of any provision under the said Act. In fact, the present appellant could have chosen some other appropriate forum under the relevant Acts or rules instead of approaching this court in appeal under the BLDR Act. The learned counsel for the respondent also questions the maintainability of this appeal petition under the BLDR Act. This plea of respondent's counsel seems to be justified in view of the fact neither the respondent, as petitioner before Addl. Collector, has invoked the provision of BLDR Act while filing a petition seeking demarcation nor the Addl. Collector has passed any order under the said Act. In that situation no appeal can be preferred by a party aggrieved by any order of Addl. Collector, under the BLDR Act.

For the aforementioned reasons, the instant appeal petition is dismissed for want of maintainability.

Dictated and Corrected by me.

20-4-16
Commissioner,
Saran Division, Chapra

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Commissioner,
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