

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 15/2016

Raj Kumar Rai

Vrs.

Kaishsh Rai & ors.

ORDER

The instant appeal is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 159/2011-12 on 30.12.2015.

The brief facts of the case are that the present appellant Raj Kumar Rai, S/o Nirshu Rai, R/o Vill-Nazarmeera, P.S.-Sonpur, Dist-Saran filed a case under the provision of Bihar Land Dispute Resolution Act-2009, before DCLR, Sonpur by making present respondents as o.ps. In the said case the relief sought for by the appellant was that the land measuring 4 katha 01 dhur of khata No. 342, plot No. 323 situated in Mouza Nazarmeera for which a order be passed be ordered for measurement by a survey knowing Commissioner besides if any encroachment is found thereon, the same be removed and possession of the same be delivered and o.ps be restrained. Thereafter, the learned DCLR, appointed a survey knowing Commissioner and considered the measurement submitted by him and ultimately on finding that the said report was doubtful, he rejected the said report and close the proceeding. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance on 17.08.17 vide order dt. 29.06.17. of this Court.

The learned counsel appearing on behalf of the appellant submitted that the impugned order is not sustainable in law as well as not maintainable because the learned DCLR has held that the measurement has been done according the map. He further submitted in detail as to how the said measurement report has been rejected by the learned DCLR without any justification and even not dealt with the reason for his such rejection of measurement report which was, in fact, prepared after scientific measurement. The leaned counsel further argued that the learned DCLR ought to have ordered for fresh measurement instead of closing the proceeding and on this ground his said order is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings advance by the learned counsel for the parties and on perusal of the impugned order, it is seen that the learned DCLR has passed the order with regard to the measurement report submitted by the survey knowing Commissioner, appointed by him earlier for the measurement of the land in question. However, it appears from the petition filed before DCLR, the appellant as petitioner, had also sought relief regarding removal of encroachment and recovery of possession. Obviously, in view of the relief sought for by the petitioner, under the BLDR Act, was not maintainable and the learned DCLR should not have entertained the said case under the BLDR Act.

It is well settled that such a complex issue relating to adjudication of dispute relating to private land can not be entertained by the revenue authorities as

held by the Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and others) on 24.06.2014 in which it has been clearly observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009 and also held that complex question of title can never be decided in a summary proceedings.

For the aforesaid reasons and discussion made therein, it is clear that the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.