

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13099 of 2013

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1. Krishna Sah S/O Late Sita Ram Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,
 2. Ishwar Jee Sah @ Ram Ishwar Sah S/O Late Sita Ram Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,
 3. Arvind Kumar Sah S/O Late Sita Ram Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,
 4. Lal Babu Sah S/O Late Sita Ram Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,
 5. Om Prakash Sah S/O Rama Jee Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,
 6. Arun Kumar Sah S/O Rama Jee Sah Resident Of Village- Tetahali Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,

.... Petitioners

Versus

1. The State Of Bihar,
2. The District Magistrate, Siwan,
3. The Sub Divisional Officer, Siwan,
4. The Deputy Collector Land Reform, Siwan Sadar, Siwan,
5. The Circle Officer, Badhariya, Siwan,
6. Md. Hanif S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan,
7. Md. Halim S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan,
8. Md. Maneer S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan,
9. Md. Sanif S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan.
10. Md. Reyajuddin S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan,
11. Md. Bismilan S/O Late Jan Mohammad @ Dosh Mohammad Resident Of Village- Chhatishi, Post- Tetahali Bazar, P.S- Barhariya, District- Siwan,
12. Lilawati Devi D/O Late Sita Ram Sah Resident Of Village Tatahali

Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,

13. Indu Devi D/O Late Sita Ram Sah Resident Of Village Tatahali Bazar,

Post- Tetahali, Post- Barhariya, District- Siwan,

14. Kalawati Devi D/O Late Sita Ram Sah Resident Of Village Tatahali

Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,

15. Lal Muniya Devi D/O Late Sita Ram Sah Resident Of Village Tatahali

Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,

16. Devanti Devi D/O Late Rama Jee Sah Resident Of Village Tatahali

Bazar, Post- Tetahali, Post- Barhariya, District- Siwan,

.... Respondents

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Appearance :

For the Petitioners : M/s Ranjeet Kumar, Dilip Kumar and
Kundan Kumar, Advocates

For the State : Mr. Mrigendra Kumar, AC to GA 11

For the Respondent No. 6: Mr. Satyendra Rai, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-01-2015

Heard learned counsel for the parties.

Learned counsel for the State seeks leave for making correction in counter affidavit as it wrongly reflects to have been filed on behalf of respondent nos. 2 to 7 in place of 2 to 7.

The writ petitioners seek quashing of the order dated 27.04.2013 passed by the Deputy Collector, Land Reforms, Siwan Sadar, Siwan in Bihar Land Dispute Resolution Case No. 35/143/2012-13, by which he has reopened the matter and remitted it back to the Anchal Adhikari, Barhariya for fresh consideration.

Notices were issued upon the respondent nos. 7 to 11.

However, none has appeared on their behalf.

Respondent no. 6 has appeared by filing a Vakalatnama on 04.08.2014 itself and has filed a counter affidavit.

No notice was issued upon respondent nos. 12 to 16, who are merely formal respondents as per the joint submission made at the Bar.

The disputed lands are measuring 1 bigha 2 katha 12 dhurs of plot no. 273 and 4 kathas 17 dhurs of plot no. 280 of survey khata no. 9 of village Chhatasi of the District of Siwan.

The private respondents were ventilating their grievances for declaration of their right as occupancy under-raiyats under section 48D of the Bihar Tenancy Act, 1885(hereinafter to be referred to as "the Act"), whereas, the petitioners claimed to be owners of the aforesaid land. The claim of the respondents was allowed *ex parte* vide order dated 18.10.1992 against which the petitioners preferred an appeal which was allowed by the Sub-Divisional Officer, Siwan on 28.04.1994 observing that the proper inquiry was not made by the concerned Anchal Adhikari before passing the aforesaid order. The private respondents, thereafter, filed fresh application before the Anchal Adhikari which was registered as Sikmi Case No. 1/94-95. The Anchal Adhikari rejected the application observing that the respondents should have



challenged the aforesaid appellate order before the competent authority. Then the respondents again moved before the Sub-Divisional Officer concerned by filing a case which was also rejected observing that they should have approached the civil court of competent jurisdiction for redressal of their grievance. Then the respondents approached the Additional Collector by filing Case No. 204/95-96, which was allowed and the matter was sent back to the authority below, however, that authority is concerned with the order of the Anchal Adhikari, Barharia passed in Case No. 12 of 1992. The father of the petitioner nos. 1 to 4 and another approached this Court by filing C.W.J.C. No. 2784 of 1996, which was disposed of vide order dated 26.02.1998, contained in Annexure 1, quashing all the earlier orders passed and directing the Anchal Adhikari, Barharia to consider the claim of the respondents in Case No. 12 of 1992 in accordance with law, after making local inquiry and giving opportunity of adducing evidence to the parties. Thereafter, the Circle Officer, Barharia decided the matter vide order dated 09.07.1998, a copy of which has been appended by the petitioners as Annexure 4 to the supplementary affidavit. The Circle Officer has held that, since the provisions of section 48C of the Act would not be applicable in case of the private respondents, thus, they cannot be granted any relief under



section 48D of the Act and the matter was decided and closed in favour of the petitioners. Thereafter, the private respondents instituted Title Suit No. 216 of 2003 seeking declaration that the they have become Kastakar of the suit land and the order of the Circle Officer refusing them to recognize as such is illegal and without jurisdiction and also for confirmation of their possession over the suit land. However, after about nine years the respondents filed a petition for withdrawal of the suit on the ground that the concerned issue is fit to be decided by the revenue authorities but under the wrong advice the suit was filed by them. The withdrawal was allowed with certain observations which stand recorded in the order dated 20.02.2012 of the concerned civil court appended as Annexure 2 to the writ petition. Thereafter, the petitioners filed a petition before the Deputy Collector, Land Reforms, Siwan (hereinafter referred to as “DCLR”), under the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as “Act of 2009”). The DCLR has passed the impugned order observing that in one of the criminal matters the trial court has observed that the private respondents of this case were the title holders and in possession of the land concerned and it were the petitioners of this case who had forcibly harvested Mahua and other crops. On that basis he had remitted back the matter to the Anchal Adhikari,

Barhariya for fresh determination of the issue after considering his own earlier order and the documents submitted by the parties and making a fresh verification for ensuring the fact as to which party is in possession.

Learned counsel for the petitioners has submitted that the controversy was already set at rest by the Circle Officer in the year 1998 itself by passing the order contained in Annexure 4 in compliance of the direction of the Single Bench of this Court, contained in Annexure 1. The private respondents did not file any appeal or revision before the competent revenue authority but they filed Title Suit No. 216 of 2003 after five years for declaration of their sikmi/occupancy right which they withdrew after 12 years. Learned counsel for the petitioners contends that the authority under the Act of 2009 has to confine itself for issuing necessary direction as it is like an executing agency for the orders passed under the six Statutes which have been mentioned in section 3 and Schedule-1 of the Act of 2009 but it itself cannot sit in appeal or revision of such order of the revenue authority which has already attained its finality. Learned counsel refers to sub-sections (2) and (3) of section 4 of the Act of 2009 in support of his submission. He further submits that sub-section (4) of section 4 of the Act of 2009 has already been held to be unconstitutional by a Division Bench

of this Court in **Maheshwar Mandal and another v. State of Bihar and others (2014(3) PLJR 281)**.

Learned counsel for the State has submitted that since the matter has already been remitted back for re-determination, no wrong has been committed by the concerned DCLR.

Learned counsel for the respondent no. 6 has filed a counter affidavit stating that the private respondents withdrew the title suit concerned for enforcing the right for ventilating their grievance before the newly formed authority under the Act of 2009.

Now the issue which falls for consideration in this case is as to whether the DCLR acting under the Act of 2009 was empowered to take up the issue and consider and pass the order impugned remitting back the matter to the Circle Officer, i.e., the authority which had already taken a final decision in the year 1998 itself in terms of the direction of this Court in C.W.J.C. No 2784 of 1996.

Section 4 of the Act of 2009 confers jurisdiction upon the competent authority for resolving the disputes which have been classified in sub-section (1) of section 4 of the aforesaid Act, however, sub-section (2) of section 4 of the Act of 2009 clearly lays down that the competent authority shall not have jurisdiction



to review or reopen any finally concluded and adjudicated proceeding under any of the Act contained in Schedule-1 of the Act of 2009. The Bihar Tenancy Act, 1885, under which the order impugned has been passed, finds place at serial no. 2 in the Schedule-1. Sub-section (3) of section 4 of the Act of 2009 declares that the competent authority shall not have jurisdiction to adjudicate any fresh rights of allottee/settlee or a raiyat which is not yet determined. Section 4(4) of the Act of 2009 which has overriding effect upon sub-sections (2) and (3) of the Act of 2009 and which has conferred certain unbridled powers upon the competent authority has already been declared unconstitutional by a Division Bench of this Court in **Maheshwar Mandal and another**(supra).

The aforesaid issue is also no longer *res integra*, inasmuch as the said Division Bench has also held that it would be necessary for any person to approach the competent authority under the Act of 2009 to show that some right has accrued to him as crystallized under the six enactments which have been provided in Schedule-1 of the Act of 2009. They can only seek enforcement of such right by approaching the competent authority. The Division Bench Court has further held that it is clear and unambiguous that the legislative intent is to confine the Act of 2009 to the execution of

the orders made under the said six enactments which have been described in Schedule-1 of the Act of 2009 and only such claim alone can be entertained under the Act of 2009. Relevant passages of the aforesaid decision of the Division Bench are reproduced as under for better appreciation:

“18. It is apparent that the Act of 2009 has been enacted with a laudable purpose of giving quick relief to the allottees and settlees who have earned a right or to whom a right has accrued under any of the aforesaid six enactments. That is why Section 3 of the Act of 2009 gives that Act overriding effect over the procedure prescribed under any of the said six enactments. Thus, in my view, the scope and ambit of the Act of 2009 is limited and is circumscribed to the extent of enforcement of rights conferred by or accrued under the aforesaid six enactments. In other words, it is an enactment for execution of the orders made under the above referred six enactments. This intention is reinforced by Sub-section(2) of Section 4 of the Act of 2009 insofar as it expressly provides, **“Competent Authority shall exercise his authority for resolving the dispute brought before him on basis of any final order passed by any of the authorities empowered to do so under the Acts contained in Schedule-1 of the Act”**. Similarly, Sub-section (3) thereof expressly prohibits the Competent Authority from exercising its jurisdiction to adjudicate any fresh rights of allottee or settlee or a raiyat not yet determined under any of the aforesaid six enactments. Thus, the legislative intent to confine the Act of 2009 to execution of the orders made under the aforesaid six enactments is clear and



unambiguous. Having thus circumscribed the powers of the Competent Authority under the Act of 2009, the mischief has crept in, in Sub-sections (4) & (5) of Section 4 of the Act of 2009. The said Sub-section (4) of Section 4 of the Act of 2009 enables the Competent Authority to determine the rights of allottees or settlees or raiyats which are not yet determined. Similarly, Sub-section (5) of Section 4 of the Act of 2009 confers a discretionary power upon the Competent Authority either to adjudicate complex questions of title himself or to allow the parties to seek remedy before the Civil Court. But for Section 4(4) of the Act of 2009, the Competent Authority is not vested with power of adjudication under any of the other provisions of the Act of 2009. The Act which is designed to execute the orders made or to enforce the rights accrued under any of the aforesaid six enactments, has been converted into a substantive or adjudicating enactment by Section 4(4) of the Act of 2009. The power of adjudication conferred under the aforesaid Sub-sections (4) & (5) of Section 4 of the Act of 2009 are largely misused. The power, which is confined to the disputes in relation to the allottees or settlees or raiyats, is exercised in respect of any dispute including the complex issues of title. Though there is no express bar against the jurisdiction of the Civil Court, the said sub-sections practically take away the jurisdiction of the Civil Court to entertain and adjudicate the disputes relating to the title to the land.

19. It is apparent that the Act of 2009 has been enacted with an intention to give immediate relief to the allottees and the settlees whose rights are crystallized under any of the six enactments



mentioned in Schedule-1 to the Act of 2009. It is, therefore, necessary that any person approaching the Competent Authority under the Act of 2009 must have a right settled or accrued to him or her under any of the aforesaid six enactments. In other words, the plaintiff has to be the allottee or a settlee of the land under any of the aforesaid six enactments and seeks enforcement of a right crystallized in favour of the plaintiff or accrued to the plaintiff under any of the aforesaid six enactments. It is such a claim alone which can be entertained by the Competent Authority under the Act of 2009. This opinion of mine is corroborated by Section 6 of the Act which makes it mandatory that in all such cases the State Government shall be a necessary party. The preamble of the Act is clear and discloses the intention of the legislature in enacting the Act of 2009. It says, **“disputes with respect to raiyati land or public land allotted in favour of different classes of allottees.....”**. Preamble of the Act of 2009 further refers to disputes in relation to, **“the Record of Rights, partition of jamabandi, forcible dispossession of allottees/ raiyats, boundary disputes etc.”** In context of the above referred six enactments, Section 3 of the Act of 2009 gives the overriding effect to the Act of 2009 in respect of the procedure prescribed in the above referred six enactments.”

(Emphasis is mine)

This being the situation, it has to be held that the competent authority under the Act of 2009 cannot sit in appeal or revision to the earlier orders passed by the authorities under

the six enactments described in Schedule-1 of the Act of 2009.

In the case in hand, the revenue authority, i.e., the Anchal Adhikari, had passed the order rejecting the claim of the private respondents in the year 1998 itself. Thereafter, no appeal or revision was preferred in the next five years. Thus, it can be held that the order of the revenue authority attained finality which was challenged by the respondents by filing a title suit which was subsequently withdrawn after about 12 years.

Therefore, in my considered opinion, since the Act of 2009 is only for the purpose of enforcing the right which had accrued to a person under the six enactments described in Schedule-1 of the Act of 2009, the DCLR, after about 14-15 years, authority concerned could not have given order for reopening of the matter by remitting it back for fresh determination as if it was sitting in appeal to the order passed by the Circle Officer.

The competent authority, thus, has committed serious error of jurisdiction in passing the impugned order dated 27.04.2013 in Bihar Land Dispute Resolution Case No. 35/143/2012-13, contained in Annexure 3, and, accordingly, the same is quashed and set aside.

Accordingly, this writ application stands allowed.

However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

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