

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1554 of 2014

In
Civil Writ Jurisdiction Case No. 10919 of 2013

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Hiralal Gupta, son of Late Shubhag Lal Gupta, resident of
Village-Madhu Tol, P.S. Khanpur, District-Samastipur
..... Appellant

Versus

1. The State of Bihar through Commissioner, Darbhanga,
District- Darbhanga (Bihar).
2. The Collector, Samastipur, District-Samastipur (Bihar).
3. The Additional Collector, Samastipur (Bihar).
4. The Senior Deputy Collector, Samastipur (Bihar)
5. Sri Shiv Kumar Shaiv, the Deputy Collector, Land
Reforms, Samastipur (Bihar)
6. Sri Shiv Kumar Choudhary, the Circle Officer, Khanpur,
District-Samastipur (Bihar).
7. The Station House Officer, P.S. Khanpur, District-
Samastipur (Bihar)
8. Ratan Lal Gupta, son of Vishnu Kant Gupta, resident of
Village Madhu Tol, P.S. Khanpur, District-Samastipur
(Bihar)

..... Respondents

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Appearance :

For the Appellants : Md. Waliur Rahman, Advocate
Mr. Sujit Kumar Singh, Advocate
Mr. K.K. Tiwari, Advocate

For Respondent No.8 : Mr. K.N. Choubey, Sr. Advocate
Mr. Dharmendra Jha, Advocate
Mr. Vinay Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 09-01-2015 This Letters Patent Appeal is preferred against the

judgment dated 18.9.2014 rendered by the learned single Judge in

C.W.J.C. No.10919 of 2013.

The 8th respondent in the writ petition is the appellant.

The writ petition was filed by one Ratan Lal Gupta,

shown as respondent No.8 in the appeal, challenging the order dated 2.4.2013 passed by the Deputy Collector Land Reforms, Samastipur in Case No.252 of 2012. The facts that gave rise to passing of the said order are as under.

The appellant is said to have purchased two pieces of land in Village-Madhutol, P.S.-Khanpur, District-Samsatipur, through sale deeds dated 3.3.2011 and 7.7.2011. The 8th respondent is said to have purchased another piece of land in the immediate neighbourhood, on 4.7.2011.

Dispute arose between the parties as to the boundary of the land purchased by them. Initially, the appellant approached the Additional District Magistrate, Samastipur-the 3rd respondent for demarcation of the land. After the demarcation, objections were raised by the concerned parties. On the direction issued by the 3rd respondent, the Land Reforms Deputy Collector-the 5th respondent initiated a proceeding under the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as 'the Act'). The 8th respondent raised an objection for initiation of those proceedings on several grounds. Through the order dated 2.4.2013, the 5th respondent-DCLR declared that the appellant has title in respect of the land that was demarcated on the basis of the boundaries mentioned in the sale deeds.

The order passed by the 5th respondent was challenged by the 8th respondent by filing the writ petition mainly on the ground of lack of jurisdiction. He pleaded that the Act empowers the 5th respondent to adjudicate the disputes only in respect of the land that was settled, or allotted, as is defined under the Act; and not the general disputes in respect of the immovable properties. The writ petition was opposed by the appellant herein.

The learned single Judge took note of the several provisions of the Act as well as the judgment of this Court in **Maheshwar Mandal Vs. State of Bihar [2014(3) PLJR 281]** and allowed the writ petition. Direction was also issued requiring the appellant to re-deliver the possession of that portion of the property, which was taken by him on the strength of the order passed by the 5th respondent. Hence this appeal.

Heard Mr. Md. Waliur Rahman, learned counsel for the appellant, and Mr. K.N. Choubey, learned Senior Counsel, appearing for the contesting respondent No.8.

There is serious dispute between the appellant on one hand and respondent No.8 on the other hand in relation to the possession as well as title to the extent that there is overlapping on the plots of land purchased by them. No exception can be taken for the efforts made by the appellant to get the land demarcated

particularly when the 8th respondent raised the dispute. If the controversy subsisted even after demarcation, the course of action open to the appellant is to file a suit for injunction or for that matter, the one for declaration of title and consequential reliefs.

Though the appellant himself did not initiate the proceeding before the 5th respondent, the ADM-the 3rd respondent appears to have directed the 5th respondent to take up the matter under the provisions of the Act. Accordingly, the 5th respondent took up the matter and passed the order dated 2.4.2013.

A serious defect crept in to the proceeding before the 5th respondent at the stage of initiation itself. Section 13 of the Act mandates that the proceedings can be taken up only when an aggrieved person files an application or complaint, in this behalf. The Act does not confer any *suo muto* powers upon the 5th respondent. Admittedly, the appellant did not file an application. In the absence of an application, there was no basis for the 5th respondent to entertain the proceedings.

Assuming that there is no defect as to the initiation of proceedings, a further question arises as to whether the 5th respondent has jurisdiction to adjudicate the dispute between the parties herein. From the preamble of the Act itself, it is clear that it is intended to protect the rights of the “allottees” or “settlers” who

are conferred with the benefit under various enactments brought into existence as part of the agrarian reforms. The expression "*Allottee or Settlee*" has been defined in sub-section (f) of section 2, as under:

"2(f) "*Allottee or Settlee*" connotes the person with whom land has been settled by the competent authority or the person who has acquired *raiyyati* rights over the land, under any of the Acts contained in Schedule-1 to this Act."

The corresponding definition of "*Allottee or Settlee*" is also provided under clause (f). Section 4 of the Act, which is pivotal in nature, defines the jurisdiction of the authority. At every stage it is mentioned that it is only when the settlee or allottee approaches him complaining of dispossession or other interference of the allotted land or the settled land, that necessary adjudication can be undertaken by the authority i.e., the 5th respondent. The provision reads as under:

"4. Jurisdiction and authority to resolve disputes.—

(1) The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes: --

- (a) Unauthorized and unlawful dispossession of any settlee or allottee from any land or part thereof,

settled with or allotted to him under any Act contained in Schedule-1 to this Act by issuance of any settlement document/*purcha* by a Competent Authority;

- (b) Restoration of possession of settled/allotted land in favour of legally entitled settlee/allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession;
- (c) Threatened dispossession of a legally entitled settlee/allottee;
- (d) Any of the matters enumerated in (a),(b) and (c) above appertaining to *raiyati* land;
- (e) Partition of land holding;
- (f) Correction of entry made in the Record of Rights including map/survey map;
- (g) Declaration of the right of a person;
- (h) Boundary disputes;
- (i) Construction of unauthorized structure; and
- (j) *Lis pendens* transfer.

(2) 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. The Competent Authority shall exercise his authority for resolving the dispute brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in Schedule-1 of the Act.

(3) The Competent Authority shall not have

jurisdiction to adjudicate any fresh rights of allottee/settlee or a *raiyat* which is not yet determined and is required to be determined in accordance with provisions contained in any of the Acts contained in Schedule-1:

Provided that where rights of allottee/settlee or *raiyat* are already determined under any of the Acts contained in Schedule-1, the Competent Authority shall have jurisdiction to entertain cases appertaining to matters enumerated in sub-section (1).

(4) Notwithstanding anything contained in sub-section (2) and (3) hereinabove, if no provision is made in any of the Acts contained in Schedule-1 for determination of rights of allottee/settlee or *raiyat* and claimed right is yet to be determined, it shall be open to the Competent authority to finally determine such right.

(5) The Competent Authority, whatever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.”

There is not even a remote indication in the provision, that the powers conferred upon the 5th respondent are in relation to the dispute in general or those between non-allottees or



settles. When the whole gamut of the Act confines the adjudication in respect of the settled and allotted lands, it was just understandable as to how the 5th respondent has entertained the present dispute. The appellant did not even allege that the land in question was either allotted or settled upon him. Therefore, entire proceedings initiated by respondent No.5 are clearly without jurisdiction.

In **Maheshwar Mandal's** case (supra), this Court clearly held that proceedings under the Act cannot be initiated in respect of the lands, which are not settled or allotted. The learned single Judge in the instant case has taken note of the same and set aside the order passed by the learned DCLR as without jurisdiction. We are in clear agreement with the order passed by the learned single Judge.

Apart from setting aside the order passed by the 5th respondent, learned single Judge directed that the 8th respondent, i.e., the appellant in this appeal must be put back in possession of the land. The 8th respondent was dispossessed from the portion of the land, on the strength of the order passed by the 5th respondent. Once the order passed by the 5th respondent was set aside as without jurisdiction, it is but natural that restoration of possession must take place.

It was brought to our notice that the appellant has since filed Title Suit No.459 of 2014 in the court of Civil Judge, Senior Division No.1 at Samastipur, it is needless to mention that the suit shall be disposed of on its own merits without treating any observation made in this set of proceedings as expression of view on the question of title.

The question as to whether the 8th respondent was dispossessed from the entire land purchased by him, or only part of it, it is left open to be decided by the Civil Court, if an application in that behalf is filed.

We do not find any basis to interfere with the order passed by the learned single Judge. The appeal is, thus, dismissed.

The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(I. A. Ansari, J)

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