

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12904 of 2014

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1. Gajendra Prasad son of Late Vimal Prasad
 2. Mahendra Prasad Singh son of Late Vimal Prasad, Both are residents of Mohalla- Bhanwar Pokhar Bagicha, P.S. Pirbahore, Town AND District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
 2. The Land Reforms, Deputy Collector, Patna Sadar, Patna
 3. The Circle Inspector, Patna Sadar, Patna
 4. The Officer-in-Charge, Ramkrishna Nagar Police Station, Town and District- Patna
 5. Sohan Prasad S/o- Late Bhola Mahto
 6. Durgesh Prasad S/o Late Mohan Mahto
 7. Mosst. Andhi Devi, w/o- Late Ram Prit Mahto
 8. Doman Mahto, S/o- Bhau Chand Mahto
 9. Mosst. Usha Devi, W/o- Late Kishore Mahto, All R/o- Mohalla Gauri Shankar Mandir Colony, Gulzarbagh, P.O. Gulzarbagh, P.S.- Alamganj, District- Patna
 10. Dudhi Mahto S/o- Late Permeshwar Mahto, R/o- Village Khemanichak, P.S. Ramkrishna Nagar, District- Patna
 11. Vijay Prasad
 12. Bigindra Prasad, Both S/o Late Bankay Prasad
 13. Jaibear Prasad, S/o Late Baleshwar Prasad
 14. Bhonu Prasad S/o late Baleshwar Prasad
 15. Tuntun Prasad @ Chandrashekhar Prasad S/o late Baleshwar Prasad
 16. Dharambir Prasad S/o late Baleshwar Prasad
 17. Dabloo Kumar S/o late Baleshwar Prasad,
- All are resident of village Nandlal Chapra, P.S.- Ramkrishna Nagar,
P.O.- Manoharpur, Kuchhuara, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Kant Shukla
Mr. Rajesh Ranjan no.1
Mr. Pankaj Kumar

For the Respondent No.1 to 4 : Mr. Purnendu Singh, G.P. 27
Mrs. Sunita Kumari, AC to G.P. 27

For the Respondent No.5 to 10 : Mr. T.N. Maitin, Sr. Adv.
Mr. Shekhar Kr. Singh

For the Respondent No. 11 to 14: Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Sushil Kumar

For the Respondent No. 15 : Mr. Pankaj Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER



The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of order dated 20.12.2013 passed in Land Dispute Case No.129 of 2013-14 by the respondent D.C.L.R., Patna Sadar, as contained in Annexure-4, whereby the aforesaid case filed on behalf of the respondent no. 5 to 10 has been allowed and their right, title and possession with respect to the lands in question, fully detailed in the impugned order, have been declared.

The learned counsel appearing on behalf of the petitioners submits that the impugned order dated 20.12.2013 (Annexure-4) passed by the competent authority under the provisions of The Bihar Land Disputes Resolution Act, 2009 (In short 'Act, 2009') is in the teeth of the ratio laid down by a Division Bench of this Court in the case of **Maheshwar Mandal vs. State of Bihar** [2014(3) PLJR 281]. Therefore, according to him, the impugned order is liable to be set aside and quashed by this Court. It is further contended that the claims/ pleas raised on behalf of the respondent no. 5 to 10 with respect to the lands in question before the competent authority was not in accordance with the provisions contained in Section 4 of the Act, 2009. By referring to the petition filed on behalf of the respondent no. 5 to 10 before the respondent D.C.L.R., as contained in Annexure-5 to the writ petition, it is submitted that, in fact, no petition under Section 4 of the Act, 2009 was filed on behalf of the respondent no. 5 to 10, rather a petition under Section 13 of the Act, 2009 was filed for declaration of their right, title and possession over the lands in question. It is also contended that though the present writ petitioners were necessary parties, yet they were not impleaded as party respondents in the aforesaid proceeding and the impugned

final order was passed in complete violation of the rules of natural justice. It is pleaded that on the above grounds, besides others, the impugned order is liable to be set aside and quashed by this Court.

The matter has been contested by the learned senior counsel appearing on behalf of the respondent no. 5 to 10. According to him, the petitioners were not impleaded as parties in a proceeding before the respondent D.C.L.R. with respect to the lands in question, therefore, at their behest the present writ petition is not maintainable. It is further contended that against the impugned order, as contained in Annexure-4, the petitioners have an alternative remedy before the prescribed appellate authority under Section 14 of the Act, 2009. Hence, according to him, the writ petition is liable to be dismissed on that ground also. It is next pleaded that the petitioners are trying to raise their claim of their right and title with respect to the lands in question, which is not within the ambit of Section 4 of the Act, 2009. Hence, according to the learned Senior counsel, the pleas raised on behalf of the petitioners are fit to be rejected outrightly. However, on query made by this Court, he has fairly conceded that the prayer made on behalf of the respondent no. 5 to 10 before the competent authority was for declaration of their right and title over the lands in question and the petition filed by them was under the provisions of Section 13 of the Act, 2009 and not under Section 4 of the Act, 2009. It is pleaded that if at all this Court is inclined to remit the matter back to the original authority, then the respondent no. 5 to 10 may be permitted to implead the petitioners as party respondents before the competent authority for grant of appropriate reliefs under the provisions of the Act, 2009.

Learned Senior counsel appearing on behalf of the



respondent no. 11 to 14, on the other hand, submits that though they were impleaded as party respondents before the competent authority, but at no point of time notices were served upon them. According to him, the entire proceeding was carried out behind their back and the impugned order was passed ex parte. Therefore, it is pleaded that the appellate authority shall not be in a position to cure the defect, which is apparent on the face of the record of the impugned order. He also contends that the entire matter may be remitted back for fresh decision by the competent authority.

After having heard the parties at great length, this Court is of the opinion that the entire matter requires reconsideration and fresh decision by the competent authority under the provisions of the Act, 2009. Indisputably, the impugned order, as contained in Annexure-4, has been passed ex parte and the claims of the opposite parties therein have not been taken into consideration by the competent authority. Secondly, the petition on behalf of the respondent no. 5 to 10 ought to have filed under Section 4 of the Act, 2009 and not under Section 13 of the Act, 2009. Furthermore, this Court finds that the petitioners were not even impleaded as party respondents though they have also raised their claim regarding the lands in question. Therefore, it would be in the interest of justice that they are also given an opportunity to raise their claim before the competent authority. This Court also finds that the impugned order is not in consonance with the ratio laid down by a Division Bench of this Court in the case of **Maheshwar Mandal vs. State of Bihar (Supra)**,

For the reasons recorded above, the impugned order dated 20.12.2013 passed in Land Dispute Case No. 129 of 2013-14, by the respondent D.C.L.R., Patna Sadar, as contained in

Annexure-4, is hereby set aside and quashed, and the matter is remitted back to the respondent D.C.L.R., Patna Sadar with a direction to decide the aforesaid case afresh, strictly in accordance with the provisions of the Act, 2009 and the ratio laid down by a Division Bench of this Court in the case of **Maheshwar Mandal vs. State of Bihar (Supra)**.

In order to expedite the matter, the petitioners as also the respondent no. 5 to 17 are hereby directed to appear before the respondent D.C.L.R., Patna Sadar within a period of six weeks from today with a certified copy of the present order, whereafter, the respondent D.C.L.R., Patna Sadar shall fix a firm date for proceeding in the aforesaid case afresh strictly in accordance with law and in the manner indicated above.

If on appearance, the respondent no. 5 to 10 file any amendment petition for amending their prayers with respect to the claims raised on their behalf earlier regarding the lands in question, then that shall be considered in accordance with law and the said amendment shall be allowed to the extent permissible under the provisions of the Act, 2009. The writ petitioners shall also be permitted to intervene in the matter and raise their claim/objections with respect to the lands in question.

The parties shall be at liberty to raise all the issues of facts and law, which may be available to them, with respect to the lands in question before the respondent D.C.L.R., Patna Sadar.

It is clarified that any observation made in the present order is only for the purposes for disposal of the present proceeding and shall not in any manner prejudice the case of either party before the competent authority with respect to the lands in question.

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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