

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3365 of 2014

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Bhogi Sah, Son Of Late Jhingur Sah, Resident Of Village- Khirhar, Anchal- Harlakhi, Sub Division- Benipatti, District- Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar, through its Secretary, Revenue Department, Bihar, Patna
2. The Commissioner, Darbhanga Division, Darbhanga
3. The Deputy Commissioner Land Reform, Benipatti, District- Madhubani
4. Ram Bilash Mishra Son Of Late Ram Surya Mishra
5. Binoy Sah Son Of Bhogi Sah
6. Shambhu Sah Son Of Bhogi Sah
7. Arun Prasad Pandey Son Of Late Hari Kinkar Prasad Pandey
Aforesaid Respondent No. 4 To 7 Are Resident Of Village + Post Office- Hisar, Police Station- Khirhar, Anchal- Harlakhi, Sub Division- Benipatti, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lakshmi Kant Tiwary, Adv. Mr. Anil Kumar, Adv.
For the Respondent nos.1to3	:	Mr. M.K.Singh, AC to SC-6
For the Respondent no.4	:	Dr.Amrendra Kumar, Adv.
For the Respondent no.7	:	Mr.Anand Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 19-05-2016 Heard learned counsel for the petitioner, learned AC to SC-6 appearing on behalf of the respondent nos.1 to 3, learned counsel appearing on behalf of the respondent no.4 as also learned counsel appearing on behalf of the respondent no.7. So far the respondent nos.5 and 6 are concerned, they are the sons of the petitioner and support the case of the petitioner.

The present writ petition filed under Article 226 of the Constitution of India arises out of a proceeding under the provisions of The Bihar Land Disputes Resolution Act, 2009 (in short 'Act, 2009').

Admittedly, the respondent no.4 is the owner of the



lands in question as mentioned in paragraph 5 of the writ petition. The petitioner claims to have negotiated with the respondent no.4 to purchase the lands in question and he further claims to have made certain advance to the respondent no.4 for purchase of the lands in question. According to the petitioner, on the basis of the part payment of negotiated consideration amount, he was put in possession over the lands in question, but subsequently a dispute arose between the parties regarding quantum of consideration amount. In view of the aforesaid dispute, the respondent no.4 filed a petition under Section 4 of the Act, 2009 for grant of appropriate relief regarding the lands in question, on the basis of which Case No.122 of 2011-12 was registered by the respondent D.C.L.R., Benipatti, the competent authority under the meaning of the Act, 2009, which was finally disposed of by the order dated 23.02.2012 (Annexure-2). Since the direction issued by the competent authority was not being implemented by the respondent no.4, the petitioner filed Appeal No.465 of 2012 before the Divisional Commissioner, Darbhanga, which was finally dismissed for want of prosecution by an order dated 31.07.2013 (Annexure-4). Thereafter, the petitioner filed a petition for restoration of aforesaid appeal, but that has also been dismissed by an order dated 11.12.2013 (Annexure-5).

Though, the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondent no.4, besides other respondents, have argued the matter at some length with respect to the dispute between the parties, but finally both sides have fairly conceded that the petition filed before the competent authority under Section 4 of the Act, 2009 was not maintainable in view of the nature of the dispute between

the parties.

Learned counsel appearing on behalf of the petitioner submits that, if certain amount was given by way of advance to the respondent no.4 for purchase of the lands in question, though the claim is not being admitted by the learned counsel for the respondent no.4, then the appropriate remedy to the petitioner was to file a suit for specific performance of contract, but the petition filed before the competent authority under Section 4 of the Act, 2009 was not maintainable.

Learned counsel appearing on behalf of the respondent no.4 does not dispute the aforesaid legal proposition.

Learned counsel appearing on behalf of the other respondents submit that, in view of the nature of the dispute between the parties, both the orders may be set aside, and a liberty may be granted to the petitioner to approach the Civil Court of competent jurisdiction for grant of appropriate relief(s) with respect to the lands in question.

After having heard the parties and in view of the fair stand taken by the learned counsel appearing on their behalf, this Court is of the opinion that the impugned orders passed by the Divisional Commissioner, Darbhanga as also the order passed by the competent authority are fit to be set aside and quashed, and a liberty should be granted to the petitioner to approach the Civil Court of competent jurisdiction for grant of appropriate relief(s) with respect to the claims raised by him with respect to the lands in question. Accordingly, the impugned order dated 11.12.2013 (Annexure-5) as also the order dated 31.07.2013 (Annexure-4) passed by the respondent Divisional Commissioner, Darbhanga in Appeal Case No.465 of 2012, and the original order dated

23.02.2012 passed in Case No.122 of 2011-12 by the respondent D.C.L.R., Benipatti (Annexure-2) are hereby set aside and quashed with a liberty to the petitioner to file an appropriate civil suit before the Civil Court of competent jurisdiction for grant of appropriate relief(s) with respect to the lands in question claimed by him.

It is clarified that, if such a civil suit is filed after impleading all the necessary parties including the respondent no.4, then the same shall be decided on its own merits on the basis of the evidence/materials produced by the parties.

The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

Arvind/-

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