

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17162 of 2013

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1. Jagat Narayan Prasad @ Jagat Narayan Sah Son Of Late Keshwar Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga
 2. Gokul Prasad @ Gokul Prasad Sah @ Gokul Prasad Gupta Son Of Jagat Narayan Prasad @ Jagat Narayan Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga
 3. Ganesh Prasad @ Ganesh Prasad Gupta Son Of Jagat Narayan Prasad @ Jagat Narayan Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga
 4. Satya Narayan Prasad @ Satya Narayan Gupta Son Of Jagat Narayan Prasad @ Jagat Narayan Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga
 5. Ashok Prasad @ Ashok Prasad Gupta Son Of Jagat Narayan Prasad @ Jagat Narayan Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga
 6. Dilip Prasad @ Dilip Prasad Gupta Son Of Jagat Narayan Prasad @ Jagat Narayan Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Darbhanga Division, Darbhanga
3. Land Reform Deputy Collector, Sadar, Darbhanga
4. Shree Raghunath Prasad Sahu Son Of Late Jamun Sah Resident Of Mohalla - Shamsheganj, P.S. - Town, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ALOK KUMAR SINHA
For the State Mr. Kaushal Kishore, AC to GP 23
For respondent no.4 Mr. A. Kumar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 27-04-2016

Heard the counsel for the petitioners and the private respondent.

The private respondent filed a proceeding under the Bihar Land Dispute Resolution Act, 2009 (for short 'the Act') before the Deputy Collector, Land Reforms against the petitioner which gave rise to Case No. 804 of 2012-13. By an order dated 11.06.2013 (Annexure-2) the said authority allowed the

application restraining the petitioner from interfering with possession of the private respondent on the subject land which contains a dwelling structure. Aggrieved thereby, the petitioner filed an application under section 14 of the Act vide Appeal No. 352 of 2013 which was disposed of by the respondent Divisional Commissioner by the following order:-

“There is no provision for filing an appeal regarding dispute with regard to a house. Hence dismissed.”

The said order is assailed in this writ application.

The contention of the petitioners is that the order is cryptic. It does not record the contention of the party and approval or disapproval of the reasons assigned by the Deputy Collector, Land Reforms in allowing the application of the private respondent.

The counsel for the private respondent, on the other hand, has submitted that an order passed by the appellate authority is now amenable to the jurisdiction of the Bihar Land Tribunal constituted under the Bihar Land Tribunal Act, 2009. The petitioner be relegated to the Tribunal for redressal of his grievance.

There is no dispute that an order passed by the Divisional Commissioner in view of amendment made in the Bihar Land Tribunal Act can be challenged before the Tribunal. But the order must be an order adjudicating on the rival claims of the party. If the Divisional Commissioner was convinced that in respect of house property no dispute can be raised and entertained under the Act then it ought to have interfered with the order of the Deputy Collector, Land Reforms. The application of judicial mind by the appellate authority is regrettably lacking. This Court is in agreement with the counsel for the petitioners that the

order is cryptic and subtle. The ends of justice, in my view, shall be met if the matter is remitted back to the court of Divisional Commissioner for affording opportunity of hearing to the parties and pass a fresh order in accordance with law.

Situated thus, the application is allowed. The order dated 16.07.20133 (Annexure-4) passed by the respondent Divisional Commissioner, Darbhanga is set aside and the appeal is restored on the file of the said authority for passing a fresh order in accordance with law. Both parties have undertaken to appear before the Commissioner within 03 weeks together with a copy of the present order enabling the said respondent to proceed and dispose of the appeal in accordance with law.

(Kishore Kumar Mandal, J)

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