

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2703 of 2014

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Ram Byas Upadhyay Son Of Late Kapilmuni Upadhyay Resident Of Village- Koni,
P.S.- Dinara, Distt.- Rohtas. At Present Resident Of Village- Rampur, P.O.- Mardan
Ray Ke Pipara, P.S.- Karagahar, Distt.- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Collector, Land Reforms, Sasaram, Distt. Rohtas
3. Ayodhya Chaubey Son Of Late Sheopujan Chaubey Resident Of Village-
Rampur, P.O.- Mardan Ray Ke Pipara, P.S.- Karagahar, Distt. - Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sudama Singh Mr. Rajni Kanth Singh
For the Respondent no. 3	:	Mr. Amrendra Narayan Rai Mr. Sanjay Kumar
For the State		Mr. Kumar Pankaj Ac to SC-V

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
ORAL JUDGMENT
Date: 10-04-2017

Heard learned counsel for the petitioner and learned
counsel for the private respondent no. 3 as well as learned AC to SC-
V for the State.

2. The petitioner has prayed for quashing the order dated
12.12.2013 passed by the Deputy Collector, Land Reforms, Sasaram,
Rohtas, in Land Dispute Case No. 52 / 2013-14 by which and
whereunder the learned Deputy Collector, Land Reforms, Sasaram,
Rohtas, declared the right of respondent no.3 and confirmed his
possession over the disputed land and also restrained the petitioner



permanently from going over the land in question and also issued direction for making correction in Jamabandi Register.

3. The Respondent no.3 filed Land Dispute Case No. 52/2013-14 before the Deputy Collector, Land Reforms, Sasaram, Rohtas, against the petitioner in respect of certain land, claiming for declaration of his right, title and confirmation of possession over the same. The learned D.C.L.R, Sasaram, Rohtas entertained the aforesaid petition. The petitioner appeared before the D.C.L.R, Sasaram, Rohtas, and filed his written statement, disclosing his case in the aforesaid written statement, particularly, raising objection regarding the jurisdiction of D.C.L.R, Sasaram, Rohtas. The learned D.C.L.R, Sasaram, Rohtas, passed the impugned order dated 12.12.2013 against which the petitioner has preferred this writ petition under article 226 of the constitution of India.

4. Learned counsel appearing for the petitioner submits that the learned D.C.L.R, Sasaram, Rohtas, had got no jurisdiction to declare the right, title and possession of the Respondent no.3 on the disputed land and, as a matter of fact, the power of D.C.L.R, Sasaram, Rohtas, was limited in entertaining the land dispute which has specifically been defined in Section 4 of the Bihar Land Disputes Resolution Act 2009. He further submitted that a Division Bench of this Court in the Case of **Maheshwar Mandal & Anr vs. The State**



of Bihar and others, reported in 2014 (3) PLJR 281, has already held that the land tribunal has got no jurisdiction to declare the right title and possession of a party and the jurisdiction of the tribunal is very limited. Learned counsel for the petitioner further submits that when the tribunal had got no jurisdiction to declare the right, title and possession of the Respondent no. 3 in respect of the disputed land, the order of the D.C.L.R, Sasaram, Rohtas, is without jurisdiction and, therefore, there was no necessity for the petitioner to file an appeal before the Commissioner and this Court has got ample power to quash the order dated 12.12.2013 passed in Land Dispute Case No. 52/2013-14 by the Deputy Collector, Land Reforms, Sasaram, Rohtas. He further submits that, as a matter of fact, the respondent no. 3 lost his right and title in a suit filed in the court of the Munsif, Sasaram, Rohtas, in respect of the same property against which he has preferred an appeal, which is still pending but despite of the aforesaid facts, the respondent no. 3 filed Land Dispute Case No. 52/2013-14 before the Deputy Collector, Land Reforms, Sasaram, Rohtas and, the learned D.C.L.R, Sasaram, Rohtas, entertained the aforesaid Land Dispute Case No.52/2013-14 and declared the right, title and possession of Respondent no. 3 in respect of the disputed property.

5. On the other hand, learned counsel appearing for the respondent no. 3 submits that this writ petition is not maintainable in



view of Section 14 of the Bihar Land Disputes Resolution Act, 2009, because there is specific provision under Section 14 of the aforesaid Act that if any party is aggrieved by the order of the competent authority, the said party may file an appeal before the Commissioner. He further submits that when the aforesaid remedy is available to the petitioner, the petitioner ought to have availed the aforesaid alternative remedy. Learned counsel for the respondent no.3 referred a decision of a coordinate Bench of this Court in the case of **Dinesh Sharma vs. The Union of Indian, reported in 2011 (2) PLJR 754**, in which it has been held by a co-ordinate Bench of this Court that the judicial discipline demands that if alternative remedy is available, the party should avail alternative remedy before filing the writ petition.

6. No doubt, there is provision of appeal in Section 14 of the aforesaid Act against the order of competent authority and the alternative remedy is available to the petitioner but mere availability of alternative remedy does not restrict the power of this Court to grant relief to the aggrieved parties under Article 226 of the Constitution of India, particularly, in the circumstance, when any authority acts without having jurisdiction to proceed with that matter. Moreover, the decision, as cited by learned counsel of the respondent no. 3, itself speaks that mere availability of alternative remedy does not bar the jurisdiction of this Court to entertain a petition filed under Article 226



of the Constitution of India and, therefore, in my view even if an alternative remedy of appeal is available to the petitioner, then also petitioner may pursue this petition filed under Article 226 of the constitution of India.

7. Section 4 of Bihar Land Disputes Resolution Act, 2009, describes the jurisdiction of the competent authority and in view thereof except the disputes, those are mentioned in section 4 of the Act, the competent authority has got no jurisdiction to entertain any other dispute. In the case of **Maheshwar Mandal (supra)**, a Division Bench of this Court has already held that the competent authority cannot entertain the dispute beyond the prescribed limit of Section 4 of the Act and the competent authority cannot usurp the jurisdiction of the civil court.

8. In the present case, the competent authority, i.e., D.C.L.R, Sasaram, Rohtas had got no jurisdiction to declare the right title and possession of the parties in respect of the disputed land, particularly, in the circumstance, when the matter was pending before the civil court but, even then, the D.C.L.R, Sasaram, Rohtas dared to declare the right, title and possession of the Respondent no.3 and, therefore, the learned D.C.L.R, Sasaram, Rohtas, went beyond his jurisdiction and the impugned order passed by the learned D.C.L.R, Sasaram, Rohtas, as stated above, is not in accordance with law.



9. On the basis of aforesaid discussions, this writ petition stands allowed and the impugned order dated 12.12.2017 passed by D.C.L.R, Sasaram, Rohtas, in Land Dispute Case No. 52/2013-14 stands quashed.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
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