

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9576 of 2015

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1. Vijay Sharma s/o Jagarnath Sharma
2. Ram Niwas Sharma s/o Late Badari Nath Sharma Both are residents of
Village - Feshra, P.S. - Pauthu, P.O. - Lahsa, District - Aurangabad.
.... .. Petitioners

Versus

1. The State of Bihar.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Aurangabad.
4. The Collector, Aurangabad.
5. The Circle Officer, Rafiganj, Aurangabad.
6. Satrudhan Sharma Son of Late Jagidhs Sharma Resident of Village -
Feshra, P.O. Lahsa, P.S. - Pauthu, District - Aurangabad.
.... .. Respondents

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Appearance :

For the Petitioners : Mr. Ranjeet Kumar
For the State : Mr. Rajeev Shekhar, AC to GA 13
For the respondent No.6 : Mr. Arun Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

11 05-11-2018 Heard the learned counsel for the petitioners, the

learned counsel for the State and the learned counsel for

respondent No.6.

The petitioners have filed this writ petition for

following reliefs:-

“(i) For setting aside the order dated 17.04.2015 passed by the learned Member (Judicial) in B.L.T. case No. 159 of 2015 whereby the learned court has dismissed the case as not maintainable on a wrong presumption that the BLDR Case No. 167/2013 decided by DCLR, Aurangabad was not a decision under the provisions of Bihar Land Disputes Redressal Act rather it was an order under the provision of Bihar Public Land Encroachment Act.

(ii) For setting aside the order dated 11.12.2014 passed by the Commissioner, Magadh Division, Gaya in BLDR Appeal No. 234 of 2014 which was dismissed on the ground of limitation.



(iii) For setting aside the order dated 01.03.2014 passed by the DCLR, Aurangabad in BLDR Case No. 167/2013 whereby the petitioners was declared encroacher over a piece of land being Khata No. 50 plot No. 843 area 16 decimal and Khata No. 51 plot No. 844 area 22 decimal and accordingly the petitioners was directed to vacate the possession and further Circle Officer, Rafiganj was directed to ensure compliance of the order.

(iv) For any other relief/ reliefs to which the petitioners deemed entitled”.

The petitioners by filing I. A. No. 3395 of 2016 prayed for quashing of the order dated 05.08.2014 and 09.05.2015 passed by the Circle Officer, Rafiganj in Encroachment case No. 02/2014-15 (Annexure-8) whereby in pursuance of the order of DCLR the Circle Officer directed the petitioners to remove the encroachment.

The facts which are necessary for disposal of this writ petition can be summarized as follows:-

The respondent No.6, Satrudhan Sharma, filed petition before the Circle Officer for removal of encroachment from public land of Khata No. 50 and 51, Khesra No. 843 and 844 respectively. On such petition, the Circle Officer, Rafiganj initiated Encroachment Case No. 7/ 2012-13. The Circle Officer vide order dated 24.04.2013 (Annexure-2) wrote letter to the DCLR whether the land in question be treated as public land or Raiyati land. On such the DCLR initiated BLDR Case No. 167 of 2013 and held that land of plot No. 843, Khata No. 50, area 16



decimal and land of plot No. 844, Khata No. 51, area 22 decimal are recorded as Gairmazarua Malik and Gairmazarua Aam respectively and the same was used by the public at large. Accordingly, he directed the Circle Officer to act in accordance with law and remove the encroachment. The petitioner filed appeal before the Commissioner, Magadh Division, Gaya but the Commissioner dismissed the appeal on the ground of limitation. The petitioner thereafter filed case before the Bihar Land Tribunal (B.L.T.) bearing B.L.T. case No. 159 of 2015 and the Member; Judicial dismissed the case holding that the case does not come within the purview of Bihar Land Dispute Resolution Act, 2009. The DCLR acted under the provisions of Section 6 (e) of the Bihar Public Land Encroachment Act, 1956.

The learned counsel for the petitioners submits that the DCLR registered the case under the Bihar Land Dispute Resolution Act, 2009 (hereinafter referred to as the Act) but Section 4 of the Act vests power in the DCLR to resolve the dispute already settled under six Acts enumerated in Section 3 of the Act, i.e., (i) The Bihar Land Reforms Act, 1950, (ii) The Bihar Tenancy Act, 1885, (iii) The Bihar Privileged Persons Homestead Tenancy Act, 1947, (iv) The Bihar Bhooda Yagna Act, 1954, (v) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of



Surplus Land) Act, 1961 and (vi) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act. The DCLR is not vested with power to act under the Bihar Public Land Encroachment Act, 1956. Section 3 of the Bihar Public Land Encroachment Act, 1956 vests power in the Collector and Circle Officer and Circle Officer is competent to initiate a proceeding under the Bihar Public Land Encroachment Act, 1956 for removal of encroachment from the public land. Therefore, the order of DCLR (Annexure-4) and the appellate order (Annexure-6) and the order passed by B.L.T. (Annexure-7) are without jurisdiction. It is further submitted that the notice issued by the Circle Officer (Annexure-8) in pursuance of the order of the DCLR is also without jurisdiction.

The learned counsel for respondent No.6 has very fairly submitted that the DCLR is not vested with power under Bihar Public Land Encroachment Act, 1956. Section 4 of the Act vests power in the DCLR to resolve the dispute already settled under six Acts enumerated in Section 3 of the Act. Therefore, the order passed by the DCLR is without jurisdiction. It is further submitted that Circle Officer is at liberty to initiate a proceeding, if any such petition is filed for removal of encroachment from the public land. It is submitted that petitioner filed this writ petition in



the month of June, 2015 but in the month of September, 2015 the petitioner also filed Title Suit No. 442 of 2015 for declaration of title and confirmation of possession over the dispute land.

On consideration of submission of both sides and on perusal of records, I find that at the instance of respondent No.6 the Circle Officer initiated Encroachment Case No. 7/12-13 and after hearing both sides the Circle Officer sought direction from the DCLR on two points whether the land in dispute be treated as public land or the land in dispute be treated as Raiyati land. Upon receipt of letter of the DCLR and also the petition of respondent No. 6 before the Chief Minister the DCLR instituted BLDR Case No. 167 of 2013 and vide order dated 01.03.2014 held that the land is public land. From a bare perusal of order of the DCLR, as contained in Annexure-4, it is evident that the DCLR has not vested with power under the Bihar Land Dispute Resolution Act, 2009 to declare the land as public land or Raiyati land. The DCLR is to resolve the dispute arising of six Acts as mentioned in Section 3 of the Act. Therefore, I find that the order dated 01.03.2014 passed by DCLR in BLDR Case No. 167 of 2013 (Annexure-4) is without jurisdiction and not sustainable. Consequently, the appellant order dated 11.12.2014 (Annexure-6) and order of the Member, Judicial, Bihar Land Tribunal in B.L.T.



case No. 159 of 2015 (Annexure-7) as well as order of Circle Officer (Annexure-8) are also illegal and not sustainable and, accordingly, the same are set aside. This writ petition is allowed.

Before parting with order it is necessary to mention that the Circle Officer illegally sought direction from the DCLR while disposing Encroachment Case No. 7/2012-13 under Bihar Public Land Encroachment Act, 1956 on two points holding that the DCLR is competent to decide the dispute under the Bihar Public Land Encroachment Act, 1956.

In this view of the fact, if any petition is filed before the Circle Officer to remove encroachment, the Circle Officer is competent to initiate a fresh proceeding in accordance with law under the Bihar Public Land Encroachment Act, 1956.

(Prabhat Kumar Jha, J)

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