

**IN THE HIGH COURT OF JUDICATURE AT  
PATNA**

**Civil Writ Jurisdiction Case No 5173 of 2012**

- 
1. JAGDISH CHAUHAN S/O LATE RITLAL CHAUHAN  
RESIDENT OF DURMARIA NONIA BASTI, P.O., P.S. &  
DISTRICT - KISHANGANJ
  2. CHANDA DEVI W/O JAGDISH CHAUHAN RESIDENT OF  
DURMARIA NONIA BASTI, P.O., P.S. & DISTRICT -  
KISHANGANJ
  3. MOST URMILA DEVI W/O LATE HARECHARAN CHAUHAN  
RESIDENT OF DURMARIA NONIA BASTI, P.O., P.S. &  
DISTRICT - KISHANGANJ
  4. PAPPU CHAUHAN S/O LATE HARECHARAN CHAUHAN  
RESIDENT OF DURMARIA NONIA BASTI, P.O., P.S. &  
DISTRICT - KISHANGANJ

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE DIVISIONAL COMMISSIONER, PURNIA, BIHAR
3. THE DEPUY COLLECTOR LAND REFORMS (D.C.L.R.) ,  
KISHANGANJ
4. SHAKUNTALA DEVI W/O MAHADEO RAM RESIDENT OF  
DURMARIA NONIA BASTI, P.O., P.S. & DISTRICT KISHANGANJ

... .. Respondent/s

---

**Appearance :**

|                      |   |                                                                      |
|----------------------|---|----------------------------------------------------------------------|
| For the Petitioner/s | : | Mr Shashi Shekhar Dwivedi, Sr Advocate with<br>Mr Shashwat, Advocate |
| For Respondent No 4  | : | N O N E                                                              |
| For the S t a t e    | : | Ms Prakritika Sharma, AC to SC XXV                                   |

---

**CORAM: HONOURABLE DR JUSTICE RAVI RANJAN  
and  
HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE DR JUSTICE RAVI RANJAN)**

**Date : 26-10-2018**

We have heard Mr Shashi Shekhar Dwivedi, learned  
Senior Counsel along with Mr Shashwat, learned counsel for the  
writ petitioner and Ms Prakritika Sharma, learned AC to SC XXV  
for the State.



2 Notices were earlier issued to private respondent No 4. It appears from the records that learned counsel Mr Diwakar Sinha, had appeared in the year, 2013 itself and upon a prayer made by him, matter was adjourned on 17.07.2013 enabling him to file counter affidavit. Again, on 16.09. 2013, private respondent No 4 was directed to answer the issue of maintainability of the proceedings under the Bihar Land Disputes Resolution Act, 2009 (for brevity, *the Act*) raised by the petitioners but for the reason best known to her, respondent No 4 has not taken any stand by filing any counter affidavit and today, when the matter is taken up, none has appeared on behalf of respondent No 4.

3 However, since the matter is of the year 2012, we do not deem it proper to further adjourn it and, as such, we are proceeding to consider the case on its own merit.

4 Through this writ petition, the petitioners seek a writ of certiorari for quashing the order dated 08.06.2011 passed by the Deputy Collector, Land Reforms, Kishanganj (for brevity, *DCLR*) in Land Disputes Resolution Case No 4 of 2010-2011, as contained in Annexure 1 as well as the appellate order dated 21.12.2011 passed by the Divisional Commissioner, Purnia in Land Disputes Appeal No 42 of 2011, which has been appended as Annexure 2.



5 From the averments made in paragraph 4 of the writ petition, it appears that the dispute in this case relates to 11 feet wide and 46 feet, 6 inches long land which is part of plot No 108 appertaining to Khata No 27 Kha of village – Durmaria which, according to respondent No 4, was encroached by the petitioners. Accordingly, respondent No 4 filed Encroachment Case No 4 of 2010-2011. The case of respondent No 4 in the Encroachment Case was that the disputed land having an area of 1 katha was purchased by her from one Muzammil Haque and Manirul Haque, sons of Wahidul Haque through a registered sale deed dated 03.08.2000 and her name was entered into the record of rights accordingly thereafter. She claimed that she came in possession and constructed a house upon it and was living there. She further alleged that subsequently petitioners encroached the aforesaid part of land forcibly and constructed 4 feet wide wall thereon giving rise to various proceedings between the parties which were still pending. The petitioners appeared before the DCLR and filed their reply to the show cause notice refuting the claim of respondent No 4. Petitioner's case was that one Doman Lal Nonia was already recorded Sikmidar vide Sikmi Khata No 3, Plot No 156 Ka and Kha and 157 and that being so, the recorded raiyats lost their right to transfer the land in favour of respondent No 4. They raised the



issue of maintainability of case also as the matter is complex issue giving rise to the dispute regarding right, title of the parties, the same was required to be raised, considered and decided by the civil court of competent jurisdiction and not by the DCLR in the summary proceedings as envisaged under the Act.

6. According to the petitioners, in the municipal survey khatian, Sikmi Khata No 3, Plot No 156 Ka and Kha and 157 stood recorded in the name of Doman Lal Nonia as he had acquired sikmi right by dint of deed of conveyance in the year, 1965 from the then owner Kaimidar Kalimuddin who was only entitled to receive the sikmi rent from Doman Lal Nonia. In 1998, aforesaid Doman Lal Nonia decided to go back to his native place and as per the custom prevailing in the locality, he decided to dispose of the sikmi right by way of an agreement and petitioner No 1 was put in possession of over half katha of land under the agreement dated 05.01.1998. The said Doman Lal Nonia assured the petitioners that he would acquire the kaimi right from the kaimidar and, thereafter, execute a sale deed also.

7 However, in view of the aforesaid, several litigations crept up between the parties which are not required to be dealt with for the reason that Mr Dwivedi, learned Senior Counsel appearing for the petitioners has raised the issue of maintainability



of the case before the DCLR. This Court would be required to go into the merits of the respective parties only if the case is held to be maintainable. Accordingly, this issue of maintainability is being dealt with at the first instance.

**8** The *lis*, which is existing between the parties, as emanating from the averments made in the writ petition as well as engrafted in the impugned orders also, in our view, is a complex issue which involves right, title and validity of transfer of the land and transfer of sikmi rights.

**9** It is not a case in which the issue has crept up after determination of the issue in question under the Statutes described in Section 3 of the Act as well as Schedule I of the Act rather a contrasting stand has been taken by the parties, one by saying that respondent No 4 has got the title transferred in her name through registered deed whereas the other says that being Sikmidar, he has a right to be put in possession of the land. The DCLR has decided the issue in favour of respondent No 4 holding that the transfer in favour of respondent No 4 through registered sale deed was valid.

**10** In our view, the issue is not so simple. It will have to be seen that whether there was a Sikmidar or not? Whether there was existing custom in the area or not regarding the transfer of Sikmi Rights? Whether the sikmi rights are transferable at all?



What will happen in such a case if there would be a transfer by the Kaimidar but the Sikmidar is in possession? Whether his possession can be said to be illegal? Whether, in the facts and circumstances of the case, the sale deed concerned is a valid document of transfer? These are the complicated issues which are required to be decided by a civil court of competent jurisdiction. In our view, the DCLR was not competent to take up such complicated issue and decide the same in the summary manner. Plain reading of Sections 4 and 5 of the Act would also reveal the same view. Sub-section (5) of Section 4 of the Act clearly indicates that if the claimed right is yet to be determined and it appears to the competent authority that issue involves complex question of title, he shall direct the parties to seek remedies before a competent Civil Court. We are tempted to cite a decision of the Division Bench of this Court rendered in the case of *Maheshwar Mandal & Another -Versus- State of Bihar & Others, 2018 (3) PLJR 1007*, in particular, paragraph nos. 47 and 48 thereof which are extracted as under:

*“47 In the present case, the Act of 2009 is not conferring or creating a right or liability. The Act of 2009 clearly provides for resolution of the disputes which arise under any*



*of the six enactments and have been duly9 adjudicated under those Acts which are mentioned in schedule 'I' of the Act of 2009. Sub-section (4) of Section 4 of the Act of 2009 is in the nature of curbing and curtaining a pre-existing common law right and, in our opinion, purports to oust the jurisdiction of the civil court in respect of the disputes which though arise under any of the six enactments for determination of rights of allottees/settlee or raiyat but has not been finally determined by the civil court of competent jurisdiction. We find that the preamble of the Act of 2009 does not talk of entering into the arena of disputes which are required to be adjudicated by the civil courts. The preamble talks of such disputes with respect to raiyati land or public land allotted in favour of different classes of allottees which should otherwise have been resolved by the Revenue Authorities but are pending in the Civil Courts and the High Courts. The preamble also takes note of the matters connecting to the record of rights, partition of*



*Jamabandi, forcible dispossession of allottees/raiyats, boundary disputes etc which are administered under the six enactments, therefore, in our opinion, the disputes which arise under any of the six enactments are first required to be adjudicated by the court, forum and the authority prescribed under those Acts and it is only when the dispute is determined and then it comes to implement the rights determined under any of the six enactments, the competent authority under the Act of 2009 may entertain such disputes/complaints.*

*48 On going through the entire scheme of the Act of 2009, we find that the kind of mischief which was noticed by the Hon'ble Division Bench in the case of **Nand Kumar Rai (supra)** has occurred in sub-section (4) of Section 4 of the Act of 2009. At the first instance, sub-section (4) of Section 4 of the Act of 2009 is a vague provision because in the garb of sub-section (4) of Section 4, contention of the learned AAG IV for the State is that the competent*



*authority can entertain all such complaints which are though with respect to the matters falling under any of the six enactments mentioned in schedule I, but prior to filing of the complaint before the competent authority, the disputes involved therein have not been adjudicated by the competent civil court and the forums mentioned there in those six enactments. This conferment of power of the competent authority to entertain a complaint in respect of matters which are covered under any of the six enactments mentioned in schedule I of the Act of 2009 would be a kind of mischief. The preamble of the Act of 2009 clearly provies that it is enacted for enforcement of a right conferred by or accrued under above referred six enactments. In fact, sub-section (5) of Section 4, makes it clear by conferring power upon the competent authority to close such proceedings which appear to him involves complex question of adjudication of title. Here the words 'complex question of adjudication' is a word of wider connotation and it necessarily*



*means that where the competent authority is called upon to adjudicate a question as to title of the land, such question, in absence of any adjudication under any of the six enactments mentioned in schedule I, has to be taken as a complex question, adjudication of title therefore would not be within the purview of scope and ambit of the powers conferred upon the competent authority. Sub-section (2) and sub-section (3) of Section 4 would make it clear that the competent authority cannot entertain a complaint in respect of disputes which are covered under any of the six enactments under schedule 'I' of the Act of 2009 but has not been decided by a competent civil court and no adjudication can take place at his hand in such matters where he is called upon to decide the question of title."*

**11** From perusal of the aforesaid passages, it would be apparent that the issue of even forceful dispossession or, in case the second party is also claiming right on the basis of certain document, it being a complicated issue, cannot be decided by the authorities under the Act. The dispute, if it is arising out of the six



enactments, are first required to be adjudicated by the court, forum and the authority prescribed in the said statutes. It is only when the dispute is determined by such authorities the question is of implementation of the rights determined under any of the six enactments the Authority under the Act can exercise its powers.

**12** In the present case, the issues do not relate to any of the said enactment. Of course, sikmi right is defined under the Bihar Tenancy Act but the issue is not whether any order was passed declaring the sikmi right or not? Issue is as to whether the alleged dispossession of petitioners by respondent No 4 could have been determined by the authorities under the Act or not? In our view, since there is no adjudication by any Court or the Authority of the lis between the parties, we would respectfully agree with the views expressed by the Division Bench of this Court in the case of *Maheshwar Mandal (supra)* by holding that there was illegal dispossession of the petitioners by respondent No 4 one would have to move before a Civil Court of competent jurisdiction.

**13** As a result, this writ petition succeeds on the ground of maintainability itself. Therefore, we would not go on the merits of the case of the respective parties and would hold that the case before the DCLR filed by respondent No 4 was not



maintainable in view of the decision of the Division Bench of this Court rendered in the case of *Maheshwar Mandal (supra)*.

**14** Accordingly, both the impugned orders, as contained in Annexures 1 and 2, are quashed and set aside and this writ petition stands allowed. However, the parties would bear their own costs.

**15.** It is further made clear that we have not taken away right or liberty of the parties to approach the competent forum for redressal of their respective grievances.

**(Dr Ravi Ranjan, J)**

**( Madhuresh Prasad, J)**

**M.E.H./-**

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 19.11.2018 |
| Transmission Date | NA         |

