

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1091 of 2013

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1. Maheshwar Mandal S/O Late Bachchi Mandal R/O Village Sahebganj, P.S., P.O. And Anchal- Narpatganj, Subdivision- Forbesganj, District Araria

2. Sanjay Mandal S/O Maheshwar Mandal R/O Village Sahebganj, P.S., P.O. And Anchal- Narpatganj, Subdivision- Forbesganj, District Araria

.... Petitioners

Versus

1. The State of Bihar

2. The Divisional Commissioner, Purnea

3. The Land Reforms Deputy Collector, Forbesganj, Araria

...**Respondents 1st Party.**

4. Smt. Jashoda Devi Wife Of Gosain Mandal Resident Of Village Sahebganj, P.S., P.O. And Anchal- Narpatganj, Subdivision- Forbesganj, District Araria

.... **Respondent 2nd Party**

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Appearance :

For the Petitioners : Mr. Yogendra Mishra, Advocate

For the State : Mr. Anjani Kumar, A.A.G.4

Mr. Amit Kumar Jha, A.C. to A.A.G.4

For the Resp. No.4 : Mr. Vishwajeet Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 31-07-2018

This writ application has come up for a fresh consideration by virtue of the order dated March 28, 2017 passed by Hon'ble Supreme Court of India in Civil Appeal No. 4726/2017 (arising out of SLP(Civil) No. 3821/2015 [State of Bihar and Ors. Vs. Maheshwar Mandal and Ors. Vs.]).



2. On perusal of the order passed by the Hon'ble Supreme Court it appears that while challenging the judgment dated 24.06.2014 passed by the then Hon'ble Division Bench in this case an impression was given to the Hon'ble Apex Court that in the writ petition before this court, there was no challenge to the *vires* of any of the provisions of the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as the "Act, 2009") and only in course of hearing of the writ petition, arguments were advanced questioning the validity of the provisions of the Act, 2009 and the Hon'ble Division Bench of this court had decided the validity of certain provisions of the Act, 2009 and declared them to be unconstitutional, without there being any pleadings to that effect.

3. We are constrained to record that apparently a wrong submission was made before the Hon'ble Apex Court and what was a matter of record before this court in I.A. No. 8999/2013 which was allowed vide order dated 20.12.2013 passed by this court were not brought to the notice of the Hon'ble Apex Court. We record the order dated 20.12.2013 passed by the learned writ court while allowing I.A. No. 8999/2013 as under: -



“ The interlocutory application has been filed for amendment in the prayer made in the main writ application so as to add relief Nos. (iii) and (iv) for declaring the entire enactment being Bihar Land Dispute Resolution Act, 2009 being in excess of power and contrary to the provisions of the Constitution and various other Central enactments as illegal, arbitrary, unconstitutional and ultra vires and for consequential relief.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No.8999 of 2013 is, accordingly, disposed of.

In view of the fact that the vires of the Act has been challenged, let the matter go out of my list and be placed before a Division Bench of this Court after obtaining the orders of the Hon’ble the Chief Justice.”

4. Learned counsel representing the writ petitioners has given much emphasis on this aspect of the matter that the Hon’ble Supreme Court of India was not duly informed about the pleadings and it seems to be a case of misleading the court by suppressing the records. prima facie



the submissions seems to be correct but we are not willing to detain ourselves on this issue when we find that the Hon'ble Apex Court has recorded in its order to the effect that what was submitted before the Hon'ble Apex Court as mentioned above was not disputed by learned counsel appearing for the parties. We therefore find that even the respondents did not point out the aforementioned facts to the Hon'ble Apex Court and because both the parties could not assist the Hon'ble Apex Court properly, the judgment of this court was set aside on the solitary ground that the validity of the Act was challenged by way of oral submissions and this court has declared it unconstitutional without there being any basis.

Brief facts

5. Be that as it may, as the judgment of this court has already been set aside, we have heard learned counsel for the petitioners and learned A.A.G.-IV on behalf of the State assisted by Mr. Anil Kumar Jha, A.C. to A.A.G.-IV and learned counsel representing respondent no. 4. It appears that initially the writ application was filed for the following reliefs:

- (i) A writ in the nature of certiorari quashing the order dated 21.12.2011



passed by the respondent no.3 as contained in Annexure-4 and the appellate order dated 08.08.2012 passed by the respondent no. 2 as contained in Annexure-5 as well as the notices dated 22.11.2012 and 31.12.2012, being the follow of action as contained in Annexure-6 series, be issued.

(ii) An appropriate writ, order or direction commanding the respondents to forbear from taking any step disturbing the petitioner's possession over the land in question, be issued.

6. It was the case of the petitioners that one Bachchi Mandal died leaving behind six sons, namely, Gosain Mandal, Mohan Mandal, Maheshwar Mandal (present petitioner no. 1), Ram Prasad Mandal, Nandlal Mandal and Rajendra Mandal. Rajendra Mandal died leaving behind his widow Meena Devi and a minor son. Bachchi Mandal acquired plot Nos. 7077, Area 3 decimals, 7072, Area 9½ decimals and 7083, Area one decimal out of the joint family funds, two registered sale deeds came to be executed and he came in



possession and on his death the said land devolved upon his heirs mentioned above. The petitioners alleged that when the said Bachchi Mandal was on death bed, the eldest son namely, Gosain Mandal took him for his treatment in the hospital, but by playing fraud upon him and without giving any knowledge to him got a sale deed executed in the name of his wife Smt. Jashoda Devi (respondent no. 4). When Bachchi Mandal came to know about this he executed a deed of cancellation dated 29.02.1996 cancelling the sale deed dated 22.12.1995 and therefore the property continued to be in joint.

7. It is further case of the petitioners that there was a panchayati in the family and in the said panchayati panchas gave award partitioning the plots bearing survey plot no. 7077 and 7082 which contains residential house. Memorandum of partition has been brought on record by Annexure-2 to the writ application. The petitioners claim that all the co-sharers including the petitioners are coming in actual and physical possession as per the memo of partition (Annexure-2) and are living in the houses standing thereon.

8. The petitioners submit that neither respondent no. 4 nor her husband or her son raised any



objection to the partition of the land and the house standing thereon at any point of time nor she took any step for declaration of exclusive title within a period of 16 years, but after coming into force of the Act, 2009 which was published on 08.01.2010 in the Bihar Gazette, the respondent no. 4 filed a case bearing No. 91 of 2011-12 before the Deputy Collector, Land Reforms (respondent No. 2) on 29.08.2011 for declaration of her title and recovery of possession on the basis of the alleged sale deed dated 22.12.1995 which had been cancelled after about two months.

(Emphasis supplied)

9. Submission of the petitioners is that the disputes raised by respondent no. 4 before respondent no. 3 was in the nature of a general dispute cognizable by a civil court of competent jurisdiction and the said dispute did not fall under any of the enactments mentioned in schedule-1 of the aforesaid Act, still the respondent no. 3 took cognizance of the matter and issued notice to the petitioners. The petitioners contested before the respondent no. 3 but respondent no. 3 decided the dispute no. 91/2011-12 by order dated 27.12.2011 allowing the claim of respondent no. 4. a



copy of the order dated 27.12.2011 passed by respondent no. 3 is Annexure-4 to the writ application.

10. The petitioners being aggrieved by the order as contained in Annexure-4 filed appeal no. 69/2012 before the Divisional Commissioner, Purnea (respondent no. 2) who also dismissed the appeal vide order dated 08.08.2012 confirming the order of respondent no. 3. In the meantime the petitioner no. 1 filed title suit no. 392/2012 in the court of learned Sub-Judge-1, Araria for a declaration that the suit land is a joint ancestral land of the parties and that the plaintiff has got 1/6th share in the suit land. At this stage, the respondent no. 3 issued notices dated 22.11.2012 and 31.12.2012 directing the petitioners to vacate the land by removing his house there from within the period of 30 days, failing which the possession will be delivered with police force.

11. The petitioners therefore moved this court challenging the order passed by respondent no. 3 and that the appellate order passed by respondent no. 2 as also the action taken by respondent no. 3 for eviction of the petitioners from the disputed plot.

12. During pendency of the writ application the



petitioners filed an amendment application seeking the following reliefs:

“27. That in the premises of the aforesaid facts and circumstances the petitioners seek permission to add the relief no. III and IV in the following terms: -

(III) An appropriate writ, order and direction declaring the entire enactment being Bihar Land Dispute Resolution Act, 2009 being in excess of power and contrary to the provisions of the Constitution and various other Central enactments as illegal, arbitrary unconstitutional and *ultra vires* be issued.

(IV) An appropriate writ, order or direction declaring Annexure-4 and 5 as illegal, void arbitrary and without jurisdiction be issued.”

Submission of the writ petitioners

13. The contention of the petitioners is that the dispute raised by respondent no. 4 is a pure dispute of civil nature cognizable by the civil court in terms of Section 9 of the Code of Civil Procedure.



14. So far as the Act of 2009 is concerned, the preamble of the Act, 2009 prescribes the purpose for which the enactment has been made. It is for resolving the dispute with respect to right, boundary entries in revenue records, unlawful occupation and for unlawfully dispossession of allottees and settlees of public land allotted in favour of different classes of allottees and to reduce the burden of civil courts and High Court in such matters by providing effective speaking mechanism with respect to certain 'Acts' enumerated hereunder to provide a uniform and common forum, procedure and mechanism under the Act.

15. It is submitted that the preamble of the Act, 2009 clearly suggests that it has been enacted for resolution of agrarian dispute under the Acts mentioned in the preamble. It is submitted that under the impugned provision the legislatures have conferred power upon the Deputy Collector, Land Reforms (DCLR) and the Commissioner who are the executive officer of the State Government to deal with the complex question of title and possession which are otherwise liable to be adjudicated by a civil court of competent jurisdiction, the executive officers according to the petitioners,



are not empowered to entertain the judicial proceedings which are to be adjudicated before the competent civil court. It is submitted that in Act, 2009, the legislatures have conferred powers to adjudicate the disputes relating to partition of land holding and declaration of right of a person as enumerated under Section 4(1)(e) and clause (g) which are exclusively triable by the civil court of competent jurisdiction in accordance with the provisions of the Code of Civil Procedure and the Evidence Act by the authorities prescribed under the Bengal, Agra, Assam Civil Courts Act.

16. It is also the contention of the petitioners that in sum and substance all suits of civil nature triable by the civil court of competent jurisdiction are now made triable by the 'DCLR' irrespective of the value of the suit, the required court fee etc. and the decision of the 'DCLR' will be open to appeal to commissioner of the department. Thus, the petitioners have contended that the State legislature has conferred all the power of civil court upon the executive officers of the State Government and the civil court has been made virtually defunct. It is submitted that according to the Act, 2009 now the civil court will get jurisdiction to decide only



those cases of civil nature which are to be referred to DCLR if he would find any complex question of title therein.

17. It has further been contended by the petitioners that the provisions of Section 4(1)(e)(g)(i) and (j) and sub-section (4) and sub-section (5) of Section 4 the Act, 2009 are not only vague and in excess of power but are also *ultra vires* of the Constitution of India as well as the Bengal, Agra and Assam Civil court Act and the Code of Civil Procedure.

Stand of the State

18. The stand of the State as to validity of the various provisions of the Act of 2009 is reflected in paragraph 23 onwards. It is stated that Section 4 of the Act, 2009 envisages the certain situation which are required to be taken care of.

19. In paragraph Nos. 26, 27 & 28 of the supplementary counter affidavit the State has come out with following stand:

“ **26.** That on a close look, it will be amply clear that sub-section (2) envisages a situation in which rights have already been determined by a competent authority in



an Act listed in Schedule-I. No dispute to that shall be entertained by the Competent Authority under the Act of 2009. For instance, land ceiling proceedings already finalized cannot be re-opened again otherwise there will be no finality. The sole exception to this general prescription appears in sub-section (1) have been exempted from a bar of re-opening. The said subjects are as follow : - Jurisdiction and Authority to Resolve Disputes – (1) The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes –

- a. Unauthorized and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-I to this Act by issuance of a settlement document/parcha by a Competent Authority;
- b. Restoration of possession of settled/allotted land in favour of legal



entitled settlee/allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession;

c. Threatened dispossession of a legally entitled settlee/allottee;

d. Any of the matters enumerated in (a) and (c) above appertaining raiyati land;

e. Partition of land holding;

f. Correction of entry made in the Record of Rights including map/survey map;

g. Declaration of the Right of a person;

h. Boundary disputes;

i. Construction of unauthorized structure; and

j. *Lis pendens* transfer.

27. That the above subjects, in fact, are the main causative factors leading to land disputes, as experience shows. Hence, there is no bar on the disposal of cases pertaining to the said subjects, notwithstanding the fact that rights have been determined in a certain manner at any stage under the Acts listed in Schedule-I of the Act of 2009.



For instance, it is commonly found that the right of a coparcener living far away from the village is not recorded, during survey, under the influence of local vested interests. On final publication, such a person had take recourse to Civil Court alone. Now he may file a case in the Court of the Competent Authority under the Act of 2009.

28. That having explained the purport of sub-section (2), with certain exceptions, reference is made to sub-section (3) of Section 4 which envisages a situation in which a forum for grievance redressal/determination of rights does exist under the Schedule-I of the Act, and yet, the same has not been invoked. There is a bar on entertaining such cases as well in the court of the competent authority under the Act of 2009. It has been made incumbent on the part of parties concerned to invoke the provisions contained in the Acts listed in Schedule-I.”

20. Referring to sub-section (4) of Section 4 of the Act, 2009 it is the submission of the State that in a given situation where there may not be any forum for determination



of rights in the Acts listed in Schedule-I of the Act of 2009, there will be no bar on the competent authority under the Act of 2009 to entertain and dispute of cases. It is the submission of learned A.A.G.-IV that on first reading sub-section (4) is a residual provision to take into consideration some unforeseen situation and cases in which the rights not only of an individual but also that of the State might have to be determined by the competent authority under the Act of 2009. Certain examples have been sought to be given in paragraph-30 of the supplementary counter affidavit.

21. On the strength of the aforementioned submissions it has been contended that since residual matters leading to land dispute will keep cropping up calling for resolutions, the Act of 2009 dealing with land disputes must contain a provision to that effect or else there would be a vacuum in the administration of justice.

Consideration

22. Having heard learned counsel for the parties and on going through the various provisions of the Act of 2009, we find it just and proper to quote the preamble of the Act of 2009 and the relevant provisions of the Act of 2009



which reads hereunder: -

A glance over the Act of 2009

Preamble :- Whereas, in the State of Bihar, disputes relating to record of rights, boundaries, entries in revenue records, unlawful occupation of raiyati land and forcible dispossession of allottees and settlees of public land, generate problems and cause unnecessary harassment to bonafide allottees/settlees, raiyats or occupants;

WHEREAS, such disputes with respect to raiyati land or public land allotted in favour of different classes of allottees are unnecessarily occupying major space of Civil Courts and Hon'ble High Court and which should otherwise have been resolved by the Revenue Authorities, who may be better equipped to deal with such disputes having regard to their continued presence in the field offices and their expertise in Revenue



Administration,

WHEREAS, in larger public interest it is deemed necessary to provide for effective and speedy mechanism to resolve such disputes which give rise to major turbulence if not addressed immediately and effectively;

AND, WHEREAS, it has been found in analysis of data relating to nature of disputes that they mostly appertain to matters connected with the record of rights, partition of jamabandi, forcible dispossession of allottees / raiyats, boundary disputes etc. and in this context, the administration of the following Acts is involved:

- (1) The Bihar Land Reforms Act, 1950,
- (2) The Bihar Tenancy Act, 1885,
- (3) The Bihar Privileged Persons Homestead Tenancy Act, 1947,
- (4) The Bihar Bhoodan Yagna Act, 1954,



(5) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961,

(6) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956,

AND, Whereas, different forums and procedures have been provided for the resolution of disputes under the above referred Acts and it is considered expedient to provide a uniform and common forum, procedure and mechanism which would achieve the objective of effective, efficacious and speedy resolution of disputes.

“2. Definitions – In this Act, unless the context otherwise requires:

(a) **“Competent Authority”** shall be Deputy Collector Land Reforms or any officer assigned to discharge the functions and duties of Deputy Collector Land Reforms in the Sub-division.



(b) “**Collector**” connotes the Collector of the concerning district.

(c) “**Commissioner**” connotes the Commissioner of the concerning Division.

(d) “**Land**” connotes Government land, raiyati land, with structure, if any.

(e) “**Allotted Land or Settled Land**” connotes the land which is allotted or settled or on which raiyati rights have accrued under any of the Acts mentioned in Schedule-I to this Act.

(f) “**Allotted or Settled**” connotes the person with whom land has been settled by the competent authority or the person who has acquired raiyati rights over the land, under any of the Acts, contained in Schedule-I to this Act.

(g) “**Raiyat**” connotes a raiyat as defined under the provision of the Bihar Tenancy Act, 1885.

(h) “**Government**” means Government



of Bihar.

(i) **“Words or expressions”** not defined in this Act shall have the same meaning as assigned in the respective Acts contained in Schedule-I to this Act.

3. Overriding effect or procedure prescribed under this Act – Notwithstanding anything contained in the following Acts, namely:-

(1) The Bihar Land Reforms Act, 1950.

(2) The Bihar Tenancy Act, 1885

(3) The Bihar Privileged Persons Homestead Tenancy Act, 1947.

(4) The Bihar Bhoodan Yagna Act, 1954

(5) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961.

(6) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

The procedure prescribed hereinafter, in this Act, shall be applicable for resolution



of any dispute arising out of or under any of the aforesaid Acts, to the extent this Act has covered such disputes and has provided Forum, procedure and mechanism for their resolution.

4. Jurisdiction and Authority to Resolve Disputes – (1) The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes –

(a) Unauthorised and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-I to this Act by issuance of any settlement document/parcha by a Competent Authority;

(b) Restoration of possession of



settled/allotted land in favour of legally entitled settle/allottee or his successor/heirs, upon adjudication of unauthorized and unlawful dispossession;

(c) Threatened dispossession of a legally entitled settlee/allottee;

(d) Any of the matters enumerated in (a) and (c) above appertaining to raiyati land;

(e) Partition of land holding;

(f) Correction of entry made in the Record of Rights including map/survey map;

(g) Declaration of the right of a person;

(h) Boundary disputes;

(i) Construction of unauthorized structure; and

(j) *Lis pendens* transfer.

(2) The Competent Authority shall not have jurisdiction to review or reopen any finally concluded and adjudicated proceeding under any of the Acts contained



in Schedule 1. The Competent Authority shall exercise his authority for resolving the dispute brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in Schedule-1 of this Act.

(3) The Competent Authority shall not have jurisdiction to adjudicate nay fresh right of allottee/settlee or a *raiya*t which is not yet determined and is required to be determined in accordance with provisions contained in any of the Acts contained in Schedule 1:

Provided that where rights of allottee/settlee or *raiya*t are already determined under any of the Acts contained in Schedule 1, the Competent Authority shall have jurisdiction to entertain cases appertaining to matters enumerated in sub-section (1).

(4) Notwithstanding anything contained



in sub-section (2) and (3) hereinabove, if no provision is made in any of the Acts contained in Schedule-1 for determination of rights of allottee/settlee or *raiyat* and claimed right is yet to be determined, it shall be open to the Competent Authority to finally determine such right.

(5) The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.

5. Competent Authority to have Powers of Civil Court- The Competent Authority shall have the same powers in making enquiries under this Act, as are vested in a court under the Code of Civil Procedure, 1908 (v of 1908), in trying a suit, in respect of:



- (a) admission of evidence by affidavits;
- (b) to issue summons for ensuring the attendance of any person and examining him on oath;
- (c) compelling the Production of Documents;
- (d) awards of cost;
- (e) to call for any report or order for Local Enquiry; and
- (f) to issue commission for local enquiry or order examination of witnesses.

6. State to be a necessary party in certain cases- Notwithstanding anything contained in any provision in any law for the time being in force, in all cases of civil nature, concerning a land or a portion thereof, and in which one of the parties to the case is an allottee or settlee under Section-2 of the Act, the State shall be a necessary party.

7. Summary Disposal of



Proceeding- All proceedings under the Act shall be disposed off summarily in accordance with the provisions of the Act and rules framed under the Act.

8. Protection of Action taken under the Act- (1) No suit, prosecution or other legal proceeding shall be maintained against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceeding shall be maintained against the State for any damage caused, or likely to be caused, or injury suffered or likely to be suffered by virtue of any provision of the Act or by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

9. Expeditious resolution of disputes –

(1) The Competent Authority shall take all



possible steps for expeditious resolution of disputes and shall ensure final adjudication within a maximum period of three months from the date of the institution of the case before him.

(2) The Competent Authority shall not allow adjournment to the parties without sufficient cause.

(3) Failure to dispose off within stipulated period without sufficient cause may call for disciplinary action against him.

10. Cognizance of cases filed under this Act - (1) No other Court except the Courts mentioned in Schedule 2 shall take cognizance of a case filed under this Act.

(2) Any proceeding lying in a court other than the ones mentioned in Schedule-1 of the Act in which the issues raised are the same as the issues in a case under this Act, shall abate.

[“(3) After the abatement of the case



under sub-section (2) the case filed under this Act shall be adjudicated and disposed off in accordance with the provisions of this Act.”]

11. Reference to Magistrate – In course of proceeding before the Competent Authority if he is satisfied that any of the parties has committed a criminal act or there is likely to be breach of peace, he may refer it to the court of competent Magistrate for proceeding in accordance with provisions contained in the Criminal Procedure Code.

12. Power of Collector to exercise superintendence, supervision and control over the Competent Authority – (1) The Competent Authority shall submit periodical report, as prescribed in the Rules, every three months to the Collector furnishing information therein regarding disputes resolved by him.



(2) The Collector may call for a report from a Competent Authority from time to time relating to final adjudication of cases instituted before him.

(3) It shall be open to the Collector to review the related functioning of the Competent Authority from time to time and if on review the Collector is satisfied that cases are not being disposed off expeditiously without sufficient cause he shall immediately report the matter to the Government for necessary action.

13. Procedure for Resolution of Disputes – (1) Any aggrieved person may file an application or complaint before the Competent Authority within whose jurisdiction the disputed land or structure is situated.

(2) On receipt of the application or complaint, the Competent Authority shall proceed to issue notice to the parties



concerned allowing them a fortnight's time from receipt of the notice to file their response and documentary evidence, if any.

(3) After the response is filed by the opposite party, the Competent Authority may allow one week's time to the applicant or the complainant to file his rejoinder, documentary evidence, if any, and a list of witnesses, if any, to be examine by him.

(4) After completion of the pleading, the competent authority shall hear the parties and dispose off the case on the basis of pleading of the parties if no further evidence or local enquiry is needed.

(5) If local enquiry is required, the competent authority may himself hold the enquiry or authorize any other public servant or Advocate to conduct the local enquiry and submit the report. The competent authority may also issue commission for local enquiry.



(6) If the Competent Authority considers it necessary to examine witnesses then he shall afford opportunity to the parties to dispute to produce witnesses in support of the application or complaint and in rebuttal thereof. The competent authority shall ensure that witnesses are produced by the parties, to the dispute without undue delay and shall also ensure that the examination of witnesses is conducted on day to day basis.

(7) The competent authority, on conclusion of the hearing, perusal of report of local inquiry if any, and on examination of witnesses if any, shall finally hear the parties and pass appropriate order in accordance with law.

(8) The competent authority shall follow the above procedure where he takes cognizance of cases on reference made by a prescribed authority or officer.



(9) The competent authority may pass an interim order of injunction in case of threatened, unauthorised and unlawful dispossession or unauthorized and unlawful demolition of structure constructed over the land in dispute.

(10) The competent authority shall dispose off cases by passing a reasoned order.

(11) Detailed dispute resolution procedure shall be prescribed by the Government by making suitable rules.

14. Appeal before the Commissioner.—(1) Any party aggrieved by the order passed by the competent authority may file an appeal before the Commissioner within whose jurisdiction the order has been passed, within a period of thirty days from the date of the order.

Provided that the Commissioner may condone the delay in filing the appeal



beyond the period of 30 (thirty) days if he is satisfied that there was sufficient cause for not filing the appeal within the prescribed period:

Provided further that a person, who was not a party to a case in the court of Competent Authority and is adversely affected by an order passed by the Competent Authority, may file an appeal before the Appellate Authority, after obtaining leave from the Appellate Authority, the Appellate Authority shall dispose of the petition filed before him, for granting the aforesaid leave to file an appeal directly, within 21 (twenty one) working days of filing of such petition].

(2) On receipt of appeal, the Commissioner shall immediately cause notice to be issued to the contesting parties allowing 15 days time for appearance and submit reply to the appeal, if any.



(3) The Commissioner shall thereafter proceed to hear the appeal and may pass such order allowing, modifying, reversing or affirming the order passed by the competent authority as he may deem fit in accordance with law.

(4) The order passed by the Commissioner shall be final and no further appeal or revision shall lie before any other authority.

15. Execution of the order passed by the competent authority.- The competent authority shall execute the order passed by him subject to order, if any, passed in appeal;

Provided that if no appeal is filed within the prescribed period he shall proceed to execute the said order either himself or authorise any other officer or employee to execute the same.

[(2) in case of unauthorized and



unlawful dispossession of any settlee/allottee under any Act contained in the schedule I of the Act or of any of raiyati land, the Competent Authority shall execute his order passed under this Act by deputing a Revenue Officer under his jurisdiction and directing the Officer-in-Charge of the concerned police station to depute a police officer with adequate police force.

(3) In case there is sufficient apprehension that the settlee/allottee of any land under any Act contained in schedule I of the Act or owner of any raiyati land may be dispossessed of his land, the Competent Authority may pass an appropriate order and shall execute his order by requesting the concerned Sub-Divisional Magistrate/Executive Magistrate/Officer-in-Charge of the concerned police station to take preventive actions under the relevant sections of



Criminal Procedure Code.

(4) In case of partition of land holding, the Competent Authority shall execute his order passed under this Act by getting the land measured land demarcated by *Amin* as per his order under prior intimation in prescribed form about the date and time of measurement and demarcation to co-sharers and by getting the *Takhtabandi* (apportionment of the specific shares of the co-shares) of the co-shares prepared. The Competent Authority shall invite objections from co-sharers against the *Takhtabandi* and upon hearing of the objections shall finalise the *Takhtabandi* and shall deliver possession of land to co-sharers in accordance with their *Takhta* (specific share). In case, it is not possible to measure or demarcate the land or to deliver the possession without the use of force then he shall depute a Revenue Officer under his



jurisdiction and direct the Officer-In-charge of all the concerned police station to depute a police officer with adequate police force and get his order executed.

(5) In case of declaration of right of a person with respect to any land, the Competent Authority shall execute his order passed under this Act by directing the revenue authorities concerned to make necessary amendment in revenue records concerned including *inter alia* the continuous record of rights, tenants ledger register and *khesra* register reflecting the right of the person as per his order.

(6) In case of boundary dispute, the Competent Authority may execute his order passed under this Act, by getting the boundaries of the concerned plot or a part thereof measured and demarcated by *Amin*, as per his order, with prior intimation in prescribed form to all land holders having



common boundaries, by way of notice indicating date and time of measurement and demarcation, but in case it is not possible without the use of force then he shall depute a Revenue Officer under his jurisdiction and direct the Officer-In-charge of the concerned police station to depute a police officer with adequate police force and get his order executed.

(7) (a) In case of unauthorized structure, the Competent Authority shall execute his order passed under this Act by directing the person responsible for such unauthorized structure through a notice in prescribed form to remove such structure within 30 days of the receipt of the order.

(b) In case the person against whom a notice is made under Clause (a) fails to remove the structure after the lapse of the 30 days period of notice, the Competent Authority shall issue a second notice in



prescribed form directing him to remove such a structure within 15 days of the receipt of the notice failing which the structure shall be impounded or the structure shall be removed at his cost.

(c) In case the structure is not removed after the lapse of 15 days period of the notice under the Clause (b), the Competent Authority shall impound the structure or remove shall be realized from the person against whom the notice has been issued under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914.

16. Attachment of standing crop over the disputed land- (1) The Competent Authority may, if he is satisfied, that standing crop over the disputed land is required to be attached in the interest of justice, he may pass appropriate order and attach the standing crop over the disputed land.



(2) The Competent Authority may order the sale of standing crop during the pendency of a proceeding before him and the sale proceed shall be kept in Government account until disposal of the case and subsequently, the sale proceeds shall be delivered to the parties in terms of order passed by him, subject to order, if any, passed in appeal.”

Consideration

23. A perusal of the relevant provision of the Act, 2009 would show that the Act has been brought into existence with certain purposes and the intention of the legislatures behind such enactment is to give quick relief to the allottees/settlees to award a right or to whom a right has accrued under any of the six enactments which are mentioned under schedule-I of the Act of 2009. It is only with an intention to give quick relief that Section 3 of the Act of 2009 gives the Act an overriding effect over the procedure prescribed under any of the said six enactments. Section 2 of the Act defines various terms and phrases used in the Act of 2009.



24. Section 2 of the Act of 2009 defines *inter alia* the words “Competent Authority” shall be the Deputy Collector Land Reforms or any officer assigned to discharge the function and duties of the Deputy Collector, Land Reforms in the Sub-Division.” Clause (b) defines “Collector” connotes the Collector of the concerned districts, Clause (c) provides the definition of the word “Commissioner” which connotes the Commissioner of the concerning Division. Clause (d) defines “Land” connotes government land, raiyati land, with structure, if any, Clause (e) defines “allotted land or settled land” connotes the land which is allotted or settled or on which the raiyati rights have accrued under any of the acts mentioned in schedule-I to this Act. Clause (f) defines “allottee or settlee” which means the person with whom land has been settled by the competent authority or the person who has acquired raiyati rights over the land, under any of the Acts contained in schedule-I to this Act.

25. Section 3 provides an overriding effect to the procedure prescribed under this Act of 2009 notwithstanding anything contained in the six Acts mentioned under Section 3 which are the Acts falling under schedule-I of the Act, 2009.



Section 3 also provides that “the procedure prescribed hereinafter, in this Act, shall be applicable for resolution of any dispute arising out of or under any of the aforesaid Acts to the extent this Act has covered such disputes and has provided forum, procedure and mechanism for their resolution.”

26. It appears from a reading of Section 3 that this provision envisages resolution of any dispute which arises out of or under the six enactments, further it gives an impression the Act 2009 covers such disputes which are the subject matter of any of the six enactments which find place in schedule ‘I’ of the Act of 2009.

27. Section 4 of the Act of 2009 deals with the jurisdiction and authority to resolve the disputes. It starts with conferring jurisdiction upon the competent authority to hear and adjudicate, on an application or complaint or on any application referred to by a prescribed authority or officer, any issue arising out of the given types of disputes under various Clauses (a), (b), (c), (d), (e), (f), (g), (h), (i) & (j) of sub-section 91) of Section 4. Since we have quoted the entire provision on the preceding pages, we would refrain from repeating the same.



28. According to sub-section (2) of Section 4 the competent authority shall not have jurisdiction to review or reopen any finally concluded and adjudicated proceeding under any of the Acts contained in schedule-I. It further provides that the competent authority shall exercise his authority for resolving the dispute brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in schedule-I of this Act. We are, therefore, clear here that the Act 2009 is looking for resolution of a dispute which arises post determination and adjudication under any of the enactments under schedule-I of the Act of 2009.

Sub-section (3) of Section 4 puts a kind of embargo on exercise of jurisdiction by the competent authority inasmuch as it says that the competent authority shall not have jurisdiction to adjudicate any fresh rights of allottee/settlee or a raiyat which is not yet determined and is required to be determined in accordance with provisions contained in any of the Acts contained in



schedule-I. **(Emphasis supplied)** However, proviso to sub-section (3) says that where rights of allottee/settlee or raiyat are already determined under any of the Acts contained in schedule-I, the competent authority shall have jurisdiction to entertain cases appertaining to matters enumerated in sub-section (1). It is, thus apparent that the intention of legislatures were very clear under sub-section (3) of Section 4 when they say that any fresh right which is not yet determined and is required to be determined under any of the six Acts cannot be decided by the competent authority.

29. Sub-section (4) of Section 4 which is the bone of contention in the present case starts with a non-obstante clause. It provides that “notwithstanding anything contained in sub-section (2) and (3) hereinabove, if no provision is made in any of the Acts contained in schedule-I for determination of rights of allottee/settlee or raiyat and claim



right is yet to be determined, it shall be open to the competent authority to finally determine such rights.” However, sub-section (5) of Section 4 says that *“The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent civil court.”* It is in the garb of sub-section (4) of Section 4 that the competent authority assumes a jurisdiction to entertain all such cases which are in the nature of a dispute covered under one or the another of the six enactments under schedule-I. It is not in dispute that to adjudicate all such disputes which are covered under any of the six enactments it is the civil court which is competent to entertain a suit, frame issues and upon adjudication to pass a judgment and decree. The words ‘if no provision is made in any of the Acts contained in schedule-I for determination of rights of allottee/settlee or raiyat’ seems to be mischievous and it has a tendency to usurp the jurisdiction of civil court which is competent to decide all disputes under any of the six enactments.

30. Section 5 confers power upon the



competent authority powers parallel to the powers of the civil court conferred under the Code of Civil Procedure, 1908 in the matter of (a) admission of evidence by affidavits; (b) to issue summons to ensuring attendance of any persons and examining him on oath; (c) compelling the production of documents; (d) award of cost; (e) to call for any report or order for local enquiry; and (f) to issue commission local enquiry or order examination of witnesses.

31. Section 6 makes it mandatory to make State a necessary party in all cases of civil nature, concerning a land and a portion thereof and in which one of the parties to the case is an allottee or settlee under Section 2 of the Act. According to Section 7, all proceedings under the Act of 2009 shall be disposed off summarily in accordance with the provisions of the Act and rules framed under the Act.

32. Section 9 talks of expeditious resolution of disputes. Section 10 provides for cognizance of cases filed under this Act and according to this sub-section (1) of Section 10 no other court except the courts mentioned in schedule-2 shall take cognizance of the case filed under this Act. According to sub-section (2) of Section 10 any proceeding lying



in a court other than the one mentioned in schedule-1 of the Act in which the issues raised are the same as the issues in a case under this Act, shall abate and by virtue of sub-section (3) of Section 9, after the abatement of the case under sub-section (2), the case filed under this Act shall be adjudicated and disposed off in accordance with the provisions of this Act. Section 11 talks of reference to Magistrate who is the competent authority on being satisfied that any of the parties has committed a criminal act or there is likely to be breach of peace, he may refer it to the court of competent Magistrate for proceeding in accordance with the provisions contained in the Criminal Procedure Code.

33. Section 12 provides for power of Collector to exercise superintendence, supervision and control over the competent authority. He has power to call for the report from a competent authority and also to review the functioning of the competent authority from time to time.

34. Section 13 lays down the procedure for resolution of disputes. Section 14 provides for statutory remedy of appeal before the Commissioner. Section 15 confers power on the competent authority to execute the



order passed by him subject to order, if any, passed in appeal. According to Section 16 the competent authority may, if he is satisfied, that standing crop over the disputed land is required to be attached in the interest of justice, he may pass appropriate order and attach the standing crop over the disputed land. Under sub-section (2) of Section 16 he may order the sale of standing crop during the pendency of a proceeding before him and the sale proceeds kept in government account until disposal of the case and subsequently, the sale proceeds shall be delivered to the parties in terms of order passed by him, subject to order, if any, passed in appeal. The Act 2009 ends with Section 17 which confers power on the government to make rules.

35. In the present case, it is one of the contentions of the appellant that in the garb of Clause (e) and (g) of sub-section (1) of Section 4, the competent authority are entertaining matters which involved adjudication as to the right, title and possession of a party to the land which are traditionally required to be resolved by a civil court of competent jurisdiction. As we have seen the facts of the case present here, the respondent no. 4 asserted her right to land



under a sale deed. She is neither an allottee nor a settlee nor does the dispute arise from any right crystallized or accrued under any of the six enactments mentioned in schedule-I of the Act, 2009. The Competent authority has still entertained the dispute and decided it which according to us is nothing but is a usurpation of power which is conferred upon a civil court.

36. When we look at the scope and ambit of the Act of 2009, it appears to us that this Act has been enacted to enforce the rights of the parties which were conferred upon them or otherwise accrued to them under the aforesaid six enactments. It is not in dispute that all the six enactments which find place in the Act of 2009 relate to land reforms and are definitely old enactments, therefore, most of the issues must have been settled by now, and, therefore, while enacting the Act of 2009 what was in the mind of the legislatures was that only residuary matters which may still require to be adjudicated/enforced would be the subject matter of the Act of 2009. This intention of the legislature gets clear from a bare reading of sub-section (2) and sub-section (3) of Section 4. In sub-section (2) a clear restraint has been imposed on the jurisdiction of the competent authority in the matter of



review/reopening of any finally concluded and adjudicated proceedings under any of the Acts contained in schedule-I. sub-section (2) makes it clear that the competent authority shall exercise his authority for resolving the disputes brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in schedule-I of this Act.

37. Having said so, in sub-section (3) of Section 4 again the legislatures make it clear that the competent authority shall not have jurisdiction to adjudicate any fresh rights of allottee/settlee or a raiyat which is not yet determined and is required to be determined in accordance with provisions contained in any of the Acts contained in Schedule-I. The problem seems to be there in sub-section (4) of Section 4 which starts with a non-obstante clause and runs counter to the intention of the legislature indicated in sub-section (2) and (3) of Section 4. It is because of sub-section (4) of Section 4 and sub-section (5) that the competent authority are taking a view that they have power to adjudicate any disputes which even though is required to be adjudicated by the courts/forums provided under the six enactments which



finds place in schedule-I, they can in their wisdom entertain such disputes unless and until they reach to a conclusion that the case instituted before them involves complex question of adjudication of title.

38. At this stage it is worth taking note of the full Bench judgment of this Court in the matter of **Nand Kumar Rai (Nand Kumar Rai and Ors. Vs. State of Bihar and Others** reported in **AIR 1974 Patna 164**. The Hon'ble Full Bench of this Court had been examining the constitutional validity of Section 109 of the Bihar Tenancy Act, 1885 as it stood after its amendment under the Act 6 of 1970. By the amendment brought in section 109, the legislatures barred the jurisdiction of civil court in respect of any application or suit concerning the preparation of publication of record or rights or settlement of rent or preparation of settlement rent drawn or for alteration of any entry in any such record or for the determination of the incidents of any tenancy.

The amendments were challenged on the grounds inter alia that it was a fraud on the legislative power of the State and was enacted in colourable exercise of power



and further that the impugned provisions are arbitral. The Hon'ble Full Bench held that clause (d) of sub-section (1) and sub-section (2) of Section 109 of the Act introduced by Bihar Act 6 of 1970 were constitutionally invalid inasmuch as the said clause (d) of sub-section (1) and sub-section (2) of Section 109 barred the jurisdiction of the civil court. The said clause (d) of sub-section (1) and sub-section (2) of Section 109 read as under:

“(d) for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof in which correctness of any entry in any such record or roll is expressly or impliedly challenged or in which determination of incidents of any tenancy is involved.

(2) Suit for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof, in which correctness of any entry in any record-of-rights or Settlement Rent roll is expressly or impliedly challenged



or in which determination of incidents of any tenancy is involved may be instituted before the Collector or any Revenue Officer specially empowered by the State Government by notification in this behalf who shall dispose of the suit in prescribed manner.”

39. The Hon’ble Full Bench held in the following

terms: -

“ it is difficult to conceive how complicated title suits would be speedily and summarily disposed of by Revenue Courts and how the under-raiyats would be benefited thereby. I can take judicial notice of the fact that a large number of title suits have been filed throughout the State of Bihar wherever Revisional Survey operations have taken place. I am also aware that the number of Civil Courts is too small to dispose of such large number of title suits. I am, however, also aware of the fact that the number of Revenue Courts is also not sufficient, rather too small to dispose of such a large number of complicated title suits. They will be simply unable to decide them unless they technically choose to literally dispose of the suits by any means; no Court by a judicial



approach will be above to dispose of such a large number of suits. I am, however, not concerned with the wisdom behind this legislation. I am concerned merely with its constitutional validity. In procedural matter suits of lighter vein have been allowed to be brought to the High Court and complicated suits are to be finally disposed of by the Revenue authorities. I also do not see any justification for making a distinction between title suits for declaration of title and possession and suits of other types such a partition or mortgage suits.”

40. In course of argument when we put a specific question to the learned A.A.G.-IV referring to sub-section (4) of Section 5 of the Act, 2009 and we wanted to know his stand as to whether in terms of sub-section (4) of Section 4 of the Act the competent authority who are the executive and revenue officers of the State have been conferred with power to deal with matters which are covered under the six enactments mentioned in schedule-I but in respect of which no determination has taken place so far, the learned A.A.G.-IV has categorically submitted that in such



circumstances where the rights of the parties have not crystallized and no *lis* is pending in respect thereof in a civil court of competent jurisdiction, the competent authority will surely have jurisdiction to entertain such disputes but then he is to be guided by sub-section (5) of Section 4 wherein it has been made clear that the competent authority wherever finds that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to the parties to seek remedies before the competent civil court.

41. Learned A.A.G.IV has thus submitted that because of the existence of sub-section (5) of Section 4, the powers conferred upon the competent authority under sub-section (4) of Section 4 cannot be said to be unreasonable, uncanalized or unbridled powers and hence no interference would be required to be made. He has relied upon the judgments which were referred in the earlier round of proceedings such as the judgment of Hon'ble Apex Court in the matters of **M/s Burrakur Coal Co. Ltd. Vs. The Union of India and Ors.** reported in **AIR 1961 SC 954**, **Mohan Lal vs. Kartar Singh and Ors.** reported in **1995 suppl. (4) SCC 684**,



Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Ors. reported in **(2001) 4 SCC 139** and **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Ors.** reported in **(1993) 3 SCC 161**. It is his submission that in the present case there will be a presumption that the legislature has not exceeded its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandate is always on the person who challenges its rights.

42. Learned A.A.G.IV submits that the Hon'ble Supreme Court has held in the case of Union of India (supra) that ***"the Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions"***.

43. In the case of M/s Burrakur Coal Co. Ltd. (supra) the Hon'ble Supreme Court while considering a notification under Section 4 of the Coal Bearing Areas (Acquisition and Development) Act (20 of 1957) was called upon to interpret the various clauses contained in the bill. While doing so the Hon'ble Supreme Court held inter alia that where the language of an Act is clear, the preamble must be



disregarded but where the object of meaning of an enactment is not clear the preamble may be resorted to explain. The courts cannot start with the preamble for construing the provisions of an Act, though they would be justified in resorting to it, nay they will be required to do so if they find that language used by parliament is unambiguous or is too general though in point of fact parliament intended that it should have a limited application. The Hon'ble Supreme Court referred paragraph-5 of the judgment of the Hon'ble Apex Court in the case of **Re: Kerala Education Bill, 1957 ... vs. Unknown** reported in **AIR 1958 SC 956**.

44. In the case of **Mohan Lal (supra)**, the Hon'ble Supreme Court was considering the scope and ambit of Section 43 and Section 47 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the "Act"), according to sub-section (1) of Section 47 no Civil Court had jurisdiction to settle, decide or deal with any matter which was under the said Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority. The Hon'ble Apex Court was called upon to examine the true scope and ambit of Section 43. A question



was posed, was it intended to make available remedy in simple cases which can be decided by holding in summary enquiry? Did the legislature intend to exclude from its purview those cases where the dispute becomes complicated because of the facts of the case and pleas raised by the contesting party? As can be seen from its preamble, the Act had been enacted with a view to amend and consolidate the law relating to tenancies and agricultural lands and to provide for certain measures of land reforms. It was held that the object of the Act was to restrict the rights of landlord, to protect the tenancies, confer new rights on the tenants and to implement new reforms. The Act was thus held to be a beneficent legislation and a complete code in itself. On considering of the object of the Act, the purpose of Section 43 and the bar contained in section 47 the Hon'ble Apex Court held that " It becomes clear from the legislature intended to oust the jurisdiction of the civil court and confer exclusive jurisdiction on the collector in matters which fall within the scope and ambit of Section 43. As rightly contended by learned counsel for the appellant this view would be in consonance with the principles of interpretation pointed out by this Court in



Dhulabhai Vs. the State of M.P.”

[4 (1968) 3 SCR 662 : AIR 1969 SC 78]

45. In the case of Shiv Kumar Chadha (supra) held that “Where statutory enactments only create rights or liabilities without providing forums for remedies, any person having a grievance that he has been wronged or his right is being affected, can approach the ordinary civil court on the principle of law that where there is a right there is a remedy – *ubi jus ibi remedium*. Where a particular Act creates a right or liability and also provides a forum for enforcement of such right or for protection from enforcement of a liability without any authority in law, the ouster of court’s jurisdiction can be upheld on the find that the rights or liabilities in question have been created by the Act without touching a pre-existing common law right and the remedy provided therein is adequate and complete. But the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the court so far remedy against the orders passed under such statute is concerned. In such cases, the courts have to be more vigilant, while examining the question as to whether an



adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance.”

46. On going through the aforesaid judgments on which reliance has been placed on behalf of the State we find that those judgments would not be applicable in the facts of the present case.

47. In the present case the Act of 2009 is not conferring or creating a right or liability. The Act 2009 clearly provides for resolution of the disputes which arise under any of the six enactments and have been duly 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/raiylats, 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



A.A.G.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 provides 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 on which reliance has been placed by learned A.A.G.-IV to save sub-section (4) 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 read with sub-section (5) 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.

49. To that extent Section 3 of the Act 2009 in so far as it talks of application of the procedure prescribed under the Act of 2009 for resolution of disputes covered under any of the aforesaid Act has to be read down to mean and understand that the procedure prescribed under the Act of 2009 shall be applicable to resolve the disputes which arise in course of implementation of a right of a settler/raiya or allottees already determined under any of the six enactments



by a competent civil court or forum and is brought before the competent authority under the Act of 2009.

50. We also find from the various clauses of sub-section (1) of Section 4 that Clause (e) talks of the disputes relating to partition of land holding, Clause (g) speaks of disputes with regard to declaration of right of a person, Clause (i) includes the disputes relating to construction of unauthorized construction and Clause (j) takes into its hold the *lis pendens* transfer.

51. In view of what we have discussed hereinabove, the aforesaid clauses occurring under sub-section (1) of Section 4 are to be read and understood limited to the disputes under these heads which have already been determined and adjudicated by a competent civil court or any other court or forum provided under any of the six enactments and the claim made by either parties has been duly adjudicated.

52. We would, therefore, declare that Clause (e) which reads “partition of land” has to be read as to the disputes relating to land allotted in a title suit between the parties or otherwise falling in the hand of a party by virtue of



an adjudication made by competent court under any of the six enactments. In the garb of Clause (e) the competent authority cannot entertain a complaint based on a claim for partition or share in a land dispute. The disputes relating to partition among the co-sharers, coparceners, and joint owners etc. which are yet not decided by a competent civil court would not be the subject matter of dispute falling in the hand of the competent authority under the Act of 2009. So far as Clause (g) of sub-section (1) of Section 4 is concerned, this provision has to be read and understood as a provision whereunder the competent authority would entertain a claim for enforcement of the declarations in favour of a person by virtue of an adjudication made by competent civil court or any other court or forum under any of the six enactments. The competent authority under the Act of 2009 being a Revenue Officer would not create or confer a right in favour of a person which may be duly conferred upon a person or declared in favour of a person by a competent civil court in an adjudication of disputes arising under any of the six enactments.

53. Further, the word 'A person' would mean an allottee/settlee of land or of raiyat as defined in Clause (f) of



Section 2 of the Act of 2009. No person other than an allottee/settlee or raiyat can have an excess to the remedy under the Act of 2009. similarly Clause (i) of sub-section (1) of Section 4 of the Act of 2009 which talks of “construction of unauthorized structure” should mean and understand only such constructions of unauthorized structure which are standing on the land of a raiyat allotted or settled under any of the above referred six enactments and no other land or structure. So far as unauthorized construction on public land are concerned, those are governed by a specific statute namely, Bihar Public Land Encroachment Act. Clause (j) of sub-section (1) of Section 4 of the Act of 2009 talks of ‘*lis pendens* transfer’ which is governed by Section 47 of the Transfer of Property Act and is applicable to a civil litigation. In our opinion, the reference of the words ‘*lis pendens* transfer’ would mean only such transfer of land of a raiyat or a settlee allotted or settled under any of the aforesaid six enactments pending the adjudication under the concerned Act. The competent authority, in exercise of his power under the Act of 2009 cannot in the garb of Clause (j) entertain a complaint and decide on the legality and validity of a transfer of land during



the pendency of a suit or proceedings before the civil court of a competent jurisdiction under any of the six enactment which are all related to land reforms.

54. We finally conclude that Clause (e), (g), (i) & (j) under sub-section (1) of Section 4 of the Act of 2009 are to be read down in the manner stated hereinabove. So far as sub-section (4) of Section 4 of the Act, 2009 is concerned, in view of the discussions made hereinabove, since we find that sub-section (4) of Section 4 has an effect of taking in its fold any real or imaginary right which may be claimed by a allottee or a settlee or a raiyat not conferred by any of the aforesaid six enactments, the wide powers conferred upon the competent authority is found to be unbridled, unfettered, uncanalized and unguided, hence, they are being grossly abused. It is, therefore not possible to save sub-section (4) of Section 4 of the Act of 2009 by applying the principles of harmonious construction of the statute. Sub-section (4) of Section 4 of the Act of 2009 is therefore held to be arbitrary and unconstitutional.

55. In the light of the discussions which we have made hereinabove, it is also declared that sub-section (5) of



Section 4 of the Act of 2009 has to be read in consonance with sub-section (2) and sub-section (3) of Section 4 of the Act of 2009. Sub-section (5) of Section 5 has to be taken as a mandatory provision. It shall be the duty of the competent authority to close the proceeding which involve question of title and rights and are in the nature of disputes covered under any of the six enactments mentioned under schedule-‘I’ of the Act of 2009 which have not been adjudicated by a competent civil court. In all such cases the competent authority shall while closing the proceeding leave it open to the parties to seek their remedies before the competent civil court.

56. In result, the writ application is allowed. The impugned order dated 27th December, 2011 passed by the Competent Authority-cum-Collector, Land Reforms, Forbesganj, Araria in B.L.D.R. Act Case No. 91 of 2011-12 is hereby quashed. As a consequence of the same the appellate order dated 8th August, 2012 passed by the Divisional Commissioner, Purnea in Land Dispute Appeal No. 69 of 2012 also stands quashed. The B.L.D.R. Act Case No. 91 of 2011-12 is not fit to proceed before the Competent Authority-cum-Deputy Collector Land Reforms, Forbesganj, therefore, the



same is dismissed with liberty to respondent no. 4 and the parties of this proceeding to pursue their claim for declaration of their rights to the disputed land before a competent civil court.

(Rajeev Ranjan Prasad, J)

I agree.
Rajendra Menon, CJ

Rajeev/-

(Rajendra Menon, CJ)

AFR/NAFR	AFR
CAV DATE	17.07.2018
Uploading Date	31.07.2018
Transmission Date	NA

