

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10420 of 2017

1. Brahmdeo Prasad Singh.
2. Ramcharitar Prasad
3. Krishna Murari Prasad All Sons of Late Bandhu Mahto @ Bandeshwar Prasad. resident of Village- Lakhanpura, P.S. Muffasil, District- Gaya.
4. Sumitra Devi Wife of Jagdish Prasad Akela, resident of Village- Konar, P.S.- Wazirganj, District- Gaya.
5. Sushila Devi Wife of Ramdheyman Mehta, resident of Village- Timalbiga, Tola- Sarsoula, P.S.- Obera, District- Aurangabad.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Revenue and Land Reforms Government of Bihar, Patna.
 3. The Bihar Land Tribunal, Polo Road, Patna through its Registrar.
 4. The Registrar, the Bihar Land Tribunal, Polo Road, Patna.
 5. The Commissioner, Magadh Pramandal, Gaya.
 6. The Deputy Collector Land Reforms (DCLR), Gaya.
 7. The Circle Officer, Gaya.
 8. Rajesh Kumar Son of Late Lakhan Lal, resident of Mohalla- Lakhibag, P.O.- Buniyadganj, P.S. and District- Gaya.
 9. Jugesh Chauhan Son of Late Gopal Chauhan,
 10. Chunni Nonia Son of Late Jagi Nonia.
- Serial No.9 & 10 are residents of Mohalla Lakhibagh, Kath Pool Road, P.S. Mofassil, District Gaya.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta
For the Respondent/s : Mr. S.C.Yadav-Gp15

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 04-10-2018

Heard Mr. J.S. Arora, the learned Senior counsel
appearing on behalf of the petitioners, the learned counsel for the
State as well as Mr. T.N. Maitin, the learned Senior counsel
appearing on behalf of respondents no.8, 9 and 10.



2. The petitioners have filed this writ petition for the following reliefs:-

(i) For issuance of an appropriate writ in the nature of Certiorari for quashing the order dated 07-07-2017 (Annexure-6) passed by the Hon'ble Mr. K.P. Ramaiah, The learned Member Administrative, the Bihar Land Tribunal, Patna in BLT Case No. 725 of 2016 by which the order dt 30.5.2014 (Annexure-1 passed by the D.C.L.R. Gaya is BLDR Case No. 456 of 2013-14 and the order dt 13.07.2016 (Annexure-3) passed by the Commissioner, Magadh Pramandal Gaya in BLDR Appeal Case No. 199 of 2014 has been set-aside.

(ii) For issuance of an appropriate writ/order/direction Commanding the respondent Concerned to not disturb the peaceful possession of the petitioners over the land which details are mentioned Para-4 of this application.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners will be found entitled in the facts and circumstances of the case.

3. The facts relevant for disposal of this writ petition are as follows:-

Cadastral Khata No.136 Plot No.87 and Plot No.88 measuring 28 Decimals land and 1 Acre 39 Decimals land respectively situated in Village Lakhanpura, P.S. Muffasil, District Gaya were recorded in the name of Punit Mahto, Shivdayal Mahto and others. Shivdayal Mahto, Nanhak Mahto and Most. Rukmini Koeri sold the lands of Khata No.136, Plot Nos.87 and 88 measuring 28 Decimals and 1 Acre 39 Decimals respectively



through sale deed dated 04.06.1930 to one Sahboo Khan. Sahboo Khan executed registered sale deed on 22.06.1945 in favour of the father of the petitioners. The name of the father of the petitioners was mutated but during revisional survey, the lands was recorded in the name of the ancestor of respondent no.8. The petitioners filed a petition under the Bihar Land Dispute Redressal Act, 2009 (hereinafter referred to as 'the BLDR Act') for correction of entry made in the Record of Rights including map and survey map. The DCLR ordered for correction in the entry of Record of Rights. The respondents filed appeal bearing BLDR Appeal Case No.199 of 2014 before the Commissioner, Magadh Division, Gaya which was dismissed on 13.07.2016. The respondents filed B.L.T. Case No.725 of 2016 before the Bihar Land Tribunal and the Member (Administrative), Bihar Land Tribunal set aside the order of the DCLR, Gaya passed in BLDR Case No.456 of 2013-14 and the order of the Commissioner passed in BLDR Appeal Case No.199 of 2014.

4. Mr. J.S. Arora, the learned counsel for the petitioners submits that under Section 4 (1)(f) of the BLDR Act, the DCLR is competent to make any correction in the entry made in the Record of Rights during the revisional survey operations. The name of the father of the petitioners was mutated in the Record of Rights but



the respondents claimed title over the land by virtue of unregistered sale deed said to have been executed by Shivdayal Mahto and others. It is further submitted that the Member (Administrative), Bihar Land Tribunal has exceeded his jurisdictions by declaring the possession of the respondent no.8 over the lands and that part of the order is beyond jurisdictions of the Bihar Land Tribunal as the Member (Administrative), Bihar Land Tribunal has got no authority and power to declare the possession of a party in a case filed against the order making correction in the Record of Rights. The petitioners have already filed Title Suit No.708 of 2014 for declaration of title and confirmation of possession and order of injunction is also passed in favour of the petitioners, therefore, the order as contained in Annexure-6 is illegal and without jurisdiction.

5. Mr. T.S. Maitin, the learned Senior counsel for the respondents submits that the DCLR has got no jurisdiction under the BLDR Act to make correction in the records of right after deciding the dispute afresh with regard to entry made in the Record of Rights during the survey operations and, therefore, the order of the DCLR as well as the Commissioner are without jurisdiction and the Member (Administrative), Bihar Land Tribunal has rightly set aside the order of both the courts on this



ground alone but at the same time very fairly conceded that so far the declaration of possession of respondent no.8 over the disputed land by the Bihar Land Tribunal is illegal as nobody sought declaration of possession in the case.

6. Having heard the submissions of both sides and on perusal of the records, only one question arises for consideration whether the DCLR has got jurisdiction to decide and make correction in the Record of Rights prepared in the revisional survey? In order to decide this question, it is very relevant to reproduce Section 4 of the Bihar Land Disputes Resolution Act, 2009 which reads as follows:

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 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 to *raiya*ti 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 any 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 or rights of allottee/settlee or *raiya*t 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.

7. From perusal of sub-section (1)(f) of Section 4, it appears that the DCLR has got jurisdiction for correction of entry made in the Record of Rights including map and survey map but sub-section (3) of Section 4 of the BLDR Act very clearly and in distinct term qualifies the power and jurisdiction of the authority under the Act and it says that the competent authority shall not have jurisdiction to adjudicate any fresh right of allottee/settlee or a *raiyyat* 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. Sub-section (3) of Section 4 clearly says that the DCLR under the BLDR Act cannot decide any dispute with regard to the six Acts mentioned in Section 3 of the Act afresh. The DCLR is vested with the power to decide such dispute between the parties which have already been decided by the competent authority under the aforesaid Acts and in the present case the survey authority has already made entry with regard to the lands in the Record of Rights in the name of the ancestor of the respondent no.8. The petitioners never agitated this matter before the competent authority for correction in the survey records of rights, therefore, I find that the DCLR has got no jurisdiction to make correction in the survey entry in records of rights and the



Member (Administrative), Bihar Land Tribunal has rightly set aside the order passed by the DCLR, Gaya in BLDR Case No.456 of 2013-14 and the Commissioner who dismissed the appeal preferred by the respondents being BLDR Appeal Case No.199 of 2014 and I do not find any illegality in the order of the Member (Administrative), Bihar Land Tribunal, which relates to the entry made in the Record of Rights but so far as the order of the Member (Administrative), Bihar Land Tribunal declaring the possession of the respondent no.8 over the lands, I find that the Member (Administrative), Bihar Land Tribunal has got no jurisdiction to decide the possession of a party and record finding to this effect whereas the possession of the party has not been decided by either DCLR or the Commissioner. Accordingly, that part of the order declaring the possession of the respondent no.8 over the disputed land is not sustainable and accordingly, the same is set aside. Having considered the facts aforesaid, the writ petition is disposed of in the aforesaid terms.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2018
Transmission Date	NA

