

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2097 of 2019

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Mamta Jha W/o Sri Sanjeev Kumar Jha, resident of Village- Jarail, P.S.- Arer,
District- Madhubani (Bihar) Presently residing at 231, Sector- 47 A
Chandigarh- 160047.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors Bihar
2. The Divisional Commissioner, Darbhanga Div. Darbhanga.
3. The Collector of the District, Madhubani.
4. The Sub-Divisional Officer, Sadar, Madhubani.
5. The Deputy Collector, Land Reforms (DCLR), Sadar, Madhubani.
6. The Circle Officer, Rahika, District- Madhubani.
7. Sri Ramdeo Rout Late Baidyanath Rout. resident of Village- Jamsham
(Pandaul), P.S. Pandaul, District- Madhubani.
8. Sri Ram Briksha Singh Raghubir Singh resident of Village- Pachar (Jainagar)
P.S.- Jainagar, District- Madhubani.
9. Baleshwar Yadav Sri Shakun Lal Yadav resident of Village- Mangrauni Tole-
Gaurakshani P.S . Raj Nagar, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Nath Jha
For the Respondent/s	:	Mr.Rishi Raj Sinha (SC-19)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

5 08-02-2019 This writ application has been filed for the following
relief:-

*“(i) Directing the respondents-
authorities to execute the judgment and
order as well as to comply with the
direction passed by the learned DCLR
(Respondent No.5) on 15.02.2018 as
contained in Annexure-4 hereto, as the
same has been passed with respect to
removing of encroachment from the lands
of the petitioner.*



(ii) Directing the respondents-authorities to take appropriate step in removing the encroachment from the respondent no.7 and 8 who have encroached upon the residential lands of the petitioner, as has been held and decided by the learned DCLR vide Annexure-4 as well as by the learned Divisional Commissioner vide Annexure-5 under the BLDR Act, 2009.

(iii) Holding and declaring that when the aforesaid order dated 15.02.2018 (Annexure-4) passed by the learned DCLR has already been affirmed upto the appellate (Div. Commissioner) vide Annexure-5 hereto, then there is no jurisdiction for respondents- authorities in ignoring the compliance of the aforesaid order & direction passed under the BLDR Act.”

2. The petitioner herself realizes that the said order of the Deputy Collector Land Reforms, Sadar, Madhubani is not being implemented by the authorities because of the Division Bench decision of this Court in case of ***Maheshwar Mandal vs. State of Bihar and ors*** reported in ***2018(3) PLJR 1007***. It is the plea of the petitioner that non-compliance of the order on the said basis is completely arbitrary, unauthorized



and without jurisdiction and that the authorities are duty bound to execute any order or direction passed under the Act.

3. In order to appreciate the controversy involved, I need to take note of certain facts as asserted in the writ application. The petitioner has a land appertaining to Mauza-Chakdha Anchal-Rahika, District-Madhubani. An application was filed by her for removal of encroachment from the land in question caused by respondent Nos. 7 and 8. It is her further case that the said land was purchased in the year 2006 from one Baleshwar Yadav through registered sale deed dated 01.03.2006 after payment of the consideration amount to the vendor. After the said purchase, the petitioner came in possession over the said land and a Jamabandi was opened in her name. The petitioner has been paying rent to the State of Bihar continuously and has rent receipts in respect of such payment. When she learnt about the said encroachment by respondent Nos. 7 and 8, she filed an application before the DCLR and accordingly BLDR case No. 27 of 2017-18 was initiated. The DCLR has decided the case in favour of the petitioner. It is also her case that the encrochers have already made pucca construction over the said land in the absence of the petitioner. It is asserted that the Deputy Collector Land



Reforms allowing the case of the petitioner had asked the encrochers to hand over the vacant possession of the land in question. Being aggrieved by the order of the DCLR, the respondent No.8 filed appeal before the Divisional Commissioner, Darbhanga giving rise to Land Dispute Appeal No. 14 of 2018. The Divisional Commissioner, however, by order dated 11.12.2018, having found the dispute to be of title and possession between the parties, in the light of the Division Bench decision of this Court in case of *Maheshwar Mandal Vs. State of Bihar* (supra), though dismissed the appeal but allowed the parties to approach the competent Court of civil jurisdiction for final adjudication of their dispute.

4. It is the case of the petitioner, in the aforesaid background, that since the appeal has been dismissed by the Divisional Commissioner, Darbhanga, the order of the Deputy Collector Land Reforms has to be given effect to and needs to be executed in accordance with Section 15 of the Bihar Land Dispute Resolution Act, 2009 (hereinafter referred to as 'the Act'). The petitioner has filed her application under Section 15 of the Act before the Deputy Collector Land Reforms, Sadar, Madhubani for execution of the order of the DCLR.

5. What is admitted from the facts asserted in the



writ application is that the private respondents are in possession over the disputed land and they have raised pucca construction. This is also not in dispute that the appeal of respondent No.8 has not been dismissed on merits by the Divisional Commissioner rather the Divisional Commissioner was of the view that there being the complex questions of title and possession involved, same could not be adjudicated upon in a proceeding under the Act.

6. Learned counsel appearing on behalf of the petitioner has vehemently argued that there being specific finding recorded by the DCLR, the petitioner should not face harassment of approaching the Court or the authorities for the restoration of possession over the land in question and removal of encroachment from the same.

7. In my view, the plea on behalf of the petitioner is totally misconceived. The Division Bench of this Court in case of ***Maheshwar Mandal*** (supra) has clearly laid down in paragraph 55 as follows:-

“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.”

8. Evidently, the Court has held sub-section (5) of Section 4 of the Act *ultra vires* the Constitution of India. In such circumstance, the claim of the petitioner that the DCLR has decided her title in respect of the land in question cannot be accepted. I reiterate here that the Commissioner’s order rejecting the appeal of respondent No.8 cannot be treated to be affirmation of the order of the Deputy Collector, rather the same is otherwise.

9. I find no merit in this application which is, accordingly, dismissed.



10. It goes without saying that the petitioner shall have the liberty to approach the competent court of civil jurisdiction for the purpose of adjudication of the dispute.

(Chakradhari Sharan Singh, J)

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