

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17592 of 2014**

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Bishwanath Ishwar, Son of Late Dhanik Lal Ishwar, Resident of Village Gudhma, P.S. Sarairanjan, District Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Ministry of Home, Govt. of Bihar, Patna.
2. The District Magistrate-cum-Collector, Samastipur.
3. The Sub-Divisional Officer, Samastipur.
4. The Deputy Collector, Land Reforms, Samastipur.
5. The Circle Officer, Sarairanjan Circle, District Samastipur.
6. The Superintendent of Police, Samastipur.
7. The Officer-in-charge of Sarairanjan P.S., District Samastipur.
8. Suraj Paswan, Son of Late Gango Paswan, Resident of Village Sarairanjan Tole Sihma, P.S. and Circle Sarairanjan, District Samastipur.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner | : | Mr. Abhay Shankar Singh, Advocate      |
| For the State      | : | Mr. Sajid Salim Khan, S.C. 25          |
|                    |   | Ms. Prakritita Sharma, A.C. to S.C. 25 |
| For Res. No.8      | : | Mr. Ram Tujabh Singh, Advocate         |

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

5      24-09-2019                      Heard Mr. Abhay Shankar Singh, the learned counsel appearing on behalf of the petitioner and Mr. Sajid Salim Khan, the learned S.C. 25 for the State.

The petitioner has filed this writ petition for direction to the respondents to protect the right, title and interest of the petitioner over the land fully described in the petition and the authority be directed to remove the illegal encroachment made over the land by respondent no.8.

Learned counsel for the petitioner submits that the petitioner filed Land Dispute Case No.152 of 2011 before the



Deputy Collector, Land Reforms, Samastipur alleging therein that respondent no.8 has illegally constructed a hut on his raiyati land by encroaching upon the land. The DCLR, Samastipur by order dated 30.12.2013 (Annexure-2) allowed the petition of the petitioner and directed the respondent no.8 to remove the encroachment. The DCLR on 25.06.2014 directed the Circle Officer and Officer-in-Charge of Sarairanjan P.S. to remove the encroachment but till date the encroachment over the land of the petitioner has not been removed. The Circle Officer submitted report before the DCLR that since respondent no.8 has constructed his hut by encroaching upon the land of the petitioner but suggested alternative way to give some land to respondent no.8 and thereafter the respondent no.8, who is landless be evicted but the encroachment from the land of the petitioner as directed by the DCLR has not been removed.

On the other hand, learned counsel for the State submits that from perusal of the petition and the order dated 30.12.2013, it would appear that the petitioner filed petition for declaration of title and recovery of possession under the Bihar Land Disputes Resolution Act, 2009. The DCLR by the order as contained in Annexure-2 declared the title of the petitioner over the land and directed the Circle Officer to remove the



encroachment from the land of the petitioner. It is submitted that in view of the law laid down by this Court in the case of Maheshwar Mandal vs. State of Bihar, reported in 2018 (3) PLJR 1007, has clearly held after interpreting Sections 3 and 4 of the Bihar Land Disputes Resolution Act, 2009 that the DCLR has got no jurisdiction to declare title and remove encroachment from a raiyati land and in this view of the fact the DCLR who joined on the post of DCLR in Samastipur in the year 2017 ordered for non-execution of the order as the Principal Secretary, Land Reforms Department also issued Circular No.391(8) that such order should not be executed in view of the law laid down in the case of Maheshwar Mandal (supra). It is submitted that the order passed by the DCLR is without jurisdiction and same is inexecutable in view of the law laid down in the case of Maheshwar Mandal (supra).

Having considered the submissions of both sides and on perusal of the records, I find that the petitioner filed petition before the DCLR for declaration of title and recovery of possession under the Bihar Land Disputes Resolution Act, 2009. The DCLR by order dated 30.12.2013 firstly declared the title of the petitioner over Plot No.6261 of Khata No.407 and held that respondent no.8 has encroached upon some portion of the raiyati



land of the petitioner and accordingly directed the Circle Officer to get the encroachment removed. In my view and in view of the law laid down in the case of Maheshwar Mandal (supra), I find that the DCLR exceeded his jurisdiction and committed jurisdictional error in declaring title and ordering for removal of encroachment thereon. In this view of the fact, the order passed by the DCLR, Samastipur is inexecutable and a direction cannot be given to the DCLR or the Circle Officer to remove the encroachment made by respondent no.8 on the land of the petitioner. The petitioner shall be at liberty to take recourse to the appropriate forum or the civil court for redressal of grievance and enforcement of right.

Having considered the facts and discussions made above, I find no merit in this writ petition and accordingly the same is dismissed.

Before parting with the order, the order that the DCLR shall not withdraw his salary stands vacated but at the same time, I observe that the Circle Officer even after issuance of the notification issued by the Principal Secretary, Land Reforms Department, sat over the matter and made futile exercise of measurement of the land on the basis of the order passed by the DCLR which is without jurisdiction, kept the



matter pending for years by entertaining the petition of the petitioner, although they have no jurisdiction to pass such order under the Bihar Land Disputes Resolution Act, 2009 and therefore they are directed to be careful in future.

**(Prabhat Kumar Jha, J)**

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