

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7126 of 2015

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Aftab Alam son of late Sabir Hussan, resident of village Dewaria, Police Station Maharajaganj, District Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner, Saran Division, Chapra.
3. The Deputy Collector, Land Reforms, Maharajgaj, District Siwan.
4. Salim Ansari.
5. Halim Ansari. Both sons of late Mohamad Hassan, resident of village Dewaria, Police Station Maharajaganj, District Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeet Kumar Tiwari
For the Respondent/s	:	Mr.Rajiv Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 28-01-2019 Heard learned counsel for the parties.

2. The petitioner has questioned the correctness of an order dated 05.01.2015 passed in B.L.D.R. Appeal No. 333/2014 (Salim Ansari and Ors. Vs. Aftab Alam), whereby the Commissioner, Saran Division, Chhapra, has set aside the order dated 01.11.2014, passed by the Deputy Collector Land Reforms, Chhapra, on reaching a conclusion that the dispute between the parties could be resolved in a civil court of competent jurisdiction. The Commissioner, has recorded in the order, that the dispute between the parties deserves to be dissolved under the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as 'the Act').

3. The order dated 01.11.2014, which has been set



aside by the impugned order of the Commissioner, is in favour of the petitioner. The proceeding before the Deputy Collector Land Reforms, Chhapra, has been initiated under the provisions of the Act.

4. Assailing the impugned order of the Commissioner, learned counsel, appearing on behalf of the petitioner, has submitted that the said order has been passed without giving the petitioner any opportunity of hearing. He contends that the very first day of hearing of the appeal, the Commissioner set aside the order, which was in petitioner's favour, behind his back and on this sole ground the order dated 05.01.2015 passed by the Commissioner, deserves interference by this Court.

5. The Court, in response to a query made by this Court as to whether the nature of dispute could be entertained by the Deputy Collector, Land Reforms, Chhapra in a proceeding under Section 4 of the Act or not, learned counsel, appearing on behalf of the petitioner, has submitted that in the absence of dispute relating to title of the parties, the Deputy Collector, Land Reforms, had rightly exercised his power under the provisions of the Act and determined some of the disputes before recording his finding, that the private respondents were causing undue disturbance over the disputed land appertaining



to *Khata* No. 150, Survey No. 2783.

7. I would have interfered with the impugned order on the ground that the petitioner was not given any opportunity of hearing before setting aside the order passed by the Deputy Collector Land Reforms, Chhapra, but after having perused the pleading on record and the order passed by the Deputy Collector Land Reforms, I am of the view, that it would be a futile exercise. The purpose for which the petitioner had filed an application before the Deputy Collector Land Reforms, is evident from Paragraph no. 5 of the writ application, which reads thus:-

“That the petitioner filed an application before Deputy Collector, Land Reforms which was registered as BLDR Case No. 58/14-15, for partition of his share as per personal law applicable to the parties and stating therein that Mohari Mian died leaving behind two sons Mustkim and Rajjak who partitioned the land by consent and Mustakim got $\frac{1}{2}$ towards north and Rajjak got $\frac{1}{2}$ towards south. Again Rajjak died leaving behind two sons Md. Hassan and Sabir Hassan, who came in possession of the disputed plot jointly, where in a road north to south was earmarked for the use of the parties. The share of Sabir



Hassan in the disputed land is to the extent of 2 Katha 10 Dhur, which is the land in dispute and over which the Respondent Nos. 2 and 3 have bad eye.”

8. On perusal of the order of the Deputy Collector Land Reforms, I find that as a matter of fact, the *inter parte* dispute in relation to ancestral land between the parties was sought to be adjudicated upon in a proceeding under the Act.

9. The nature of dispute, in my view, could be resolved only in a competent court of civil jurisdiction.

10. For the aforesaid reason, I am not inclined to interfere with the impugned order of the Commissioner, despite noticing the said order to have been passed without following the principles of natural justice.

11. It goes without saying that the petitioner shall have a liberty to take recourse to law by filing appropriately framed plaint/suit in accordance with the law before competent court of civil jurisdiction. The findings recorded by the revenue courts below shall prejudice the case of none.

12. This application stands disposed of.

(Chakradhari Sharan Singh, J)

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