IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16606 of 2014

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Gita Devi Wife of Sri Raj Kishore Prasad Resident of village - Ghorasahan, Tola Pakahi, District - East Champaran

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, District East Champaran Motihari
3. The Deputy Collector Land Reforms D.C.L.R. , Sikrahna, Dhaka District - East Champaran, Motihari
4. The Circle Officer, Ghorasahan, District East Champaran, Motihari
5. Anil Kumar Son of Mahadev Ram resident of village - Ghorasahan, P.S. Ghorasahan, District - East Champaran, Motihari

... ... Respondent/s

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with

Miscellaneous Jurisdiction Case No. 1926 of 2016

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Gita Devi Wife of Sri Raj Kishore Prasad Resident of village - Ghorasahan, Tola Pakahi, District - East Champaran

... ... Petitioner/s

Versus

1 The State Of Bihar

2. Mr Anupam Kumar, son of not known, Collector, East Champaran, Motihari

3. Mr. Birendra Kumar, son of not known, Deputy Collector Land Reforms D.C.L.R. , Sikrahna, Dhakam District - East Champaran Motihari

4. Mr. Uday Shankar Mishra son of not known, The Circle Officer, Ghorasahan, District East Champaran

5. Mr. Anil Kumar Son of Mahadev Ram resident of village - Ghorasahan, P.S. Ghorasahan, District - East Champaran

... ... Opposite parties

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Appearance :
(In Civil Writ Jurisdiction Case No. 16606 of 2014)
For the Petitioner/s : Rakesh Kumar Srivastava
For the Respondent No.5 :Mr. Pramod Kumar Singh
Mr. Kumar Mritunjay
Mr. Rahul Kumar Singh
For the State Mr. Vivek Anand Amitesh, AC to SC
(In Miscellaneous Jurisdiction Case No. 1926 of 2016)
For the Petitioner/s : Mr.Rakesh Kumar Shrivastava
For the State : Ms. Binita Singh GP-31

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

15 15-01-2019 It appears that MJC No. 1926 of 2016 has

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wrongly been listed.

Heard.

This writ application being CWJC No. 16606 of 2014 has been filed, seeking quashing of the order dated 12.02.2014, passed in Case No. 91 of 2013, instituted under the Bihar land Disputes Resolution Act, 2009 (hereinafter to be referred to as 'the Act'), by the Deputy Collector Land Reforms (DCLR), Sikrahna, Dhaka, East Champaran, Motihari, whereby he has restrained the opposite parties of the said case from not making any construction over the disputed land and has directed the Circle Officer, Ghorasahan, East Champaran, Motihari, to demolish the boundary, which the petitioner had constructed upon the said disputed land.

It appears that during the pendency of this writ application, the petitioner filed a case before the Bihar Land Tribunal, Patna, giving rise to B.L.T. Case No. 400 of 2014 against the same impugned order, which has been dismissed by an order dated 22.07.2014.

The petitioner has filed an interlocutory application being I.A. No. 2150 of 2015, seeking amendment in the present writ application so as to

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challenge the said order dated 22.07.2014, passed by the Bihar Land Tribunal, Patna. The learned Member Administrative, B.L.T. has dismissed the case as not maintainable since the application (B.L.T. Case No. 400 of 2014) was not filed against the final order. The impugned order passed by the DCLR is apparently *ex parte*.

In view of the submission, interlocutory application being I.A.No. 2150 of 2015 is allowed.

Learned counsel, appearing on behalf of the petitioner, assailing the impugned orders of the DCLR and the Member Administrative, B.L.T. has made the following submissions:-

(i) Without ensuring the actual service of notice upon the petitioner, the DCLR proceeded to decide the case *ex parte*.

(ii) The DCLR does not have any authority under the Act to decide the question of title and, therefore, exceeding the jurisdiction, he has passed the impugned order, deciding the title in respect of the disputed land in favour of the private respondent. He has relied on a Division Bench decision of this Court in the case of **Maheshwar Mandal and another Vs. The State of**

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Bihar and others, reported in **2018 (3) PLJR 1007**.

(iii) The Member Administrative, B.L.T. has wrongly recorded that the application filed by the petitioner before the Tribunal was not against the final order, when the order of the DCLR, which was impugned before the Tribunal, was manifestly final in nature.

There cannot be any gainsaying over the proposition that the DCLR exercising the power under the Act cannot decide the question of title, as has been held by the Division Bench in the case of **Maheshwar Mandal** (supra). There is one aspect which is not in dispute. The petitioner had remedy of appeal before the Commissioner under Section 14 of the Act against the order of the DCLR. Sub-section (4) of Section 14 of the Act states that an order passed by the Commissioner shall be final and no further appeal or revision shall lie before any other authority. The petitioner, without invoking Section 14 of the Act, directly approached the B.L.T., assailing the order of the DCLR. Apparently, in this background, the learned Member Administrative, B.L.T. has recorded in his impugned order dated 22.07.2014 that since the order being assailed before the Tribunal was not final, the

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application was not maintainable. In my view, the said observation of the learned Member Administrative is in the light of the provision under sub-section (4) of Section 14 of the Act, which states that the order passed by the Commissioner shall be final. The Tribunal could entertain the application against the final order only and, in that background, the Member Administrative, B.L.T. refused to entertain the petitioner's application filed against the DCLR.

I do not find any illegality in the impugned order passed by the Member Administrative, B.L.T. dated 22.07.2014. So far as the plea of the petitioner that the DCLR did not ensure service of notice upon the petitioner before proceeding *ex parte* is concerned, in my view, this plea the petitioner could have taken by filing an appeal before the Commissioner, which he did not do.

In such view of the matter, without interfering with the order impugned, I just indicate that the petitioner shall have liberty to avail the remedy of appeal under the Act before the Commissioner, raising the plea which he has raised in the present writ application. It goes without saying that the petitioner will also be at liberty to approach

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the competent court of civil jurisdiction by way of filing a suit for adjudication on the question of title. It is observed that if he files a suit, any observation made by the DCLR, which is impugned in the writ application, will not prejudice his case. It is further observed that if the petitioner chooses to prefer an appeal under Section 14 of the Act, the Court expects that the Commissioner shall condone the delay in accordance with law.

This disposes of this writ application.

(Chakradhari Sharan Singh, J)

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