

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1004 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Katihar

ARJUN RAJAK S/o Late Lakhan Lal Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsaoi, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary to Govt. , Deptt. of Home (Special), Govt. of Bihar, Patna.
2. Shri Udayan Mihsra, IAS, The Collector, Katihar, District- Katihar. Katihar
3. The Subdivisional Magistrate, Barsoi, District- Katihar. Katihar
4. Vikas Kumar, I.P.S., The Superintendent of Police, Katihar, District- Katihar. Katihar.
5. Amar Kumar Rai, The Circle Officer, Barsoi, District- Katihar Katihar
6. Ram Bilash Singh, The S.H.O., Barsoi, District- Katihar. Katihar.
7. Tarun Roy S/o Late Shivanath Roy Resident of Village- Barsoi Ras Chowk, P.O. and P.S.- Barsoi, District- Katihar.
8. Arun Sah S/o Late Vishwanath Sah Resident of Village- Dakaitpuja Sahpara, P.O. and P.S.- Barsoi, District- Katihar.
9. Vikash Rajak S/o Late Lakhan Lal Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsoi, District- Katihar.
10. Sushila Devi D/o Late Lakhan Lal Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsoi, District- Katihar.
11. Anita Devi Widow of Late Naresh Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsoi, District- Katihar.
12. Mannu Rajak S/o Late Naresh Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsoi, District- Katihar. who are represented though their natural Guardian (Mother).
13. Sangita Kumari D/o Late Naresh Rajak Resident of Mohalla- Barsoi Bazar, Sultanpur, P.O. and P.S.- Barsoi, District- Katihar. who are represented though their natural Guardian (Mother).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anshuman Jaipuriyar, Adv.
For the Respondent/s : Mr. Manish Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER/JUDGMENT

25-07-2023

Heard learned counsel for the parties.

2. The present writ application has been filed for



issuance of a writ for a direction to reinstate the petitioner back upon the land which was settled in the name of petitioner's father through Settlement Case No. 181/1982-1983 on 30.03.1984.

3. The factual matrix of the case in a narrow compass inasmuch as according to the petitioner Khata No. 572, Khesra No. 301, Thana No. 132 having the area of 1.00 Acre, Anchal-Barson, Mauza-Sultanpur, Distt-Katihar was settled in favour of father of the petitioner, namely, Lakhan Lal Rajak through Settlement Case No. 181/1982-1983 in 1984 (Annexure-2). The mutation was done. The name of the petitioner's father was entered into Register-II, Jamabandi No. 1057 was created and rent receipts were being issued.

4. Further case of the petitioner is that in the year 1991, the private Respondents who are land grabbers started creating disturbance in the peaceful possession of the petitioner with threatened dispossession having the evil eyes upon his land and subsequently, private respondents forcibly managed to evict the petitioner from the land in question with the help of men and muscle power against which the petitioner on 27.11.1991 filed a complaint before the Janta Darbar of Collector, Katihar and then he was reinstated. The private respondents again started creating



nuisance on the land in question upon which petition dated 17.03.1994 was filed which was registered as Non FIR Case No . 10M/1994 and the proceeding under Section 144 CrPC was initiated by the SDO. After hearing both the parties learned SDO passed an order dated 21.04.1994 observing that it seems that two Jamabandis for the same land have been opened in favour of both the parties separately and land revenue rent receipts have also been granted to both the sides for the same land. According to him, the dispute relates to demarcation of boundary which could be ascertained by the C.O., Barsoi and accordingly, the proceeding under Section 144 CrPC was dropped.

5. Again on 10.04.2014, the private respondents forcibly dispossessed the petitioner from the land in question with the help of men and muscle power but upon complaint of the petitioner an FIR was lodged against them and the petitioner with the help of police and local persons was reinstated on the land in question. On 30.06.2014, the petitioner filed BLDR Case No. 65/2014 under the provisions of Bihar Land Dispute Resolution Act, 2009 (in short 'the Act') before DCLR, Barsoi who vide his order dated 27.01.2015 allowed the petition filed by the petitioner and directed the C.O., Barsoi to demarcate the



settled land of the petitioner and give possession to the petitioner on the land in question. He further observed that if the private respondents want to declare title over the land in question, they are free to approach for redressal of their grievances.

6. An appeal bearing BLDR Appeal Case No. 67/2015 was preferred by the private respondents before the Divisional Commissioner, Purnea on 12.03.2015 against the aforesaid order passed by DCLR dated 27.01.2015. The learned Divisional Commissioner, Purnea *vide* order dated 09.06.2020 directed the learned C.O. to demarcate the settled land and give possession to the petitioner. According to the petitioner, he has been dispossessed on 05.02.2021 from the land in question by the private respondents with the help of C.O. and the police officials.

7. A counter affidavit has been filed by the respondents stating therein that the private respondents and others filed a Land Dispute Appeal bearing 67/2015 that the land in question is covering Khatiyani Area having 22.70 acres which was owned previously by their ancestors. At the time of survey the land was found merged into Mahanda River and hence the same was recorded as Gairmazaruwa Bihar Sarkar.



Then they filed Restoration Case No. 15/84-85 under Section 52(A) of the B.T. Act. The case was heard and found that the land in question was owned by one Tarun Ray & Ors and now the same has come out of the river. Accordingly, the appeal was allowed and the order passed by the DCLR was quashed.

8. Learned counsel for the petitioner argued that petitioner is the rightful owner of the subject land from where he has been dispossessed by the private respondents with the help of respondent-authorities. He further submits that the order passed by DCLR as well as that of Commissioner are in favour of the petitioner. As such, the petitioner is entitled for reinstatement on the subject land by the direction issued by this Court under its extra ordinary writ jurisdiction.

9. On the other hand, learned counsel for the State argued that it is out and out a civil dispute between the parties and both of them have been fighting litigation since long. As such, this Court may not enter into the *inter se* dispute between the two private parties under its writ jurisdiction. Learned counsel further pointed out that from perusal of the order passed by Divisional Commissioner, it is apparent that the appellant i.e., private respondents were in possession of the disputed land and accordingly, both the DCLR as well as Divisional



Commissioner directed the C.O. for demarcation and delivery of possession in favour of the petitioner. The petitioner instead of filing execution case under Section 15 of the Act has filed the writ application giving imaginary date of his dispossession whereas as per finding arrived at by both the authorities, the petitioner was not in a possession of the disputed land. The petitioner in the garb of present writ application is praying for execution of the order passed by the Divisional Commissioner.

10. I have heard the learned counsel for the parties and gone through the material on record.

11. The dispute in the present case appears to be civil dispute inasmuch as both the parties are claiming their rights through the settlement and allottee of the land in question or part thereof. The Act has been brought in the State of Bihar to resolve the disputes, relating to record of rights, boundaries, entries in revenue records, lawful occupation of the land and forcible dispossession of the allottees and settlees of public land, by the competent authority prescribed in the Act.

12. The preamble of the Act says that disputes with respect to *raiyati* land or public land allotted in favour of different classes of allottees are unnecessarily occupying major space of Civil Courts and Hon'ble High Court which should



otherwise have been resolved by the Revenue Authorities, who is better equipped to deal with such disputes having regard to their continued presence in the field offices and their expertise in Revenue Administration.

13. Section 4 of the Act deals with the jurisdiction of competent authority to resolve the dispute. The competent authority shall have jurisdiction and authority in issues arising out of disputes regarding unauthorized 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-1 to this Act. Restoration of possession of settled/allotted land in favour of legally entitled settlee/allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession. Threatened dispossession of a legally entitled settlee/allottee can also be dealt with by the competent authority under the Act.

14. Section 15 as well as Rule 30 of the Act deals with the execution of the order passed by the competent authority. As such, the Act is a complete code for resolution of the land dispute between the private parties. The petitioner being aware of the provisions of the Act at the first instance approached the competent authority i.e., DCLR for resolution of



the dispute but instead of pursuing his matter under the Act against dispossession or otherwise, he has filed the present writ application for restoration of his possession. Learned appellate court of Divisional Commissioner has arrived at the finding in his order dated 09.06.2020 at Annexure-6 that the appellants i.e., private respondents are in possession of the subject land and accordingly, directed the CO to demarcate the land and deliver the possession to the petitioner and others according to Parvana/settlement. As such, claim of the petitioner that he has been dispossessed on 05.02.2021 is palpably not acceptable because the petitioner was found not in possession at the time of passing the order by Divisional Commissioner on 09.06.2020.

15. It is not the case of the petitioner that after order of Divisional Commissioner, he has been put back in possession by the C.O. It has become a general trend these days to invoke jurisdiction of criminal writ in land dispute when the parties have adequate remedy open to them under the Act or in Civil Suit.

16. In view of the aforesaid discussion on facts and laws, in my considered opinion, the present dispute is a dispute of civil nature between the parties and they have already taken recourse to the Act. The petitioner in the garb of aforesaid



dispossession has sought relief for restoration of possession which according to this Court is not entertainable in the facts and circumstances of the present case. Accordingly, the present writ application is hereby dismissed.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.08.2023
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