

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.451 of 2020

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1. Shambhu Singh.
 2. Tuntun Singh.
 3. Shankar Singh.
Son of late Somari Singh.
 4. Gyani Singh, Son of Late Biso Singh.
 5. Ranjeet Singh @ Munna Singh, Son of Late Baleshwar Singh.
 6. Shomar Singh, son of Karelal Singh.
 7. Ghoghal Singh, son of Karelal Singh.
 8. Devendra Singh, Son of Late Bhagwat Singh.
 9. Surendra Singh, son of Anandi Singh.
 10. Manju Devi, Wife of Upendra Singh and D/o Late Lakshmi Singh.
 11. Subhash Singh @ Subhash Chandra Singh, Son of Late Gobardhan Singh.
 12. Raj Kishore Sharma, son of Late Rameshwar Sharma.
 13. Subodh Sharma, Son of Chhotelal Sharma.
 14. Suresh Sharma, Son of Late Paro Sharma.
 15. Ramotar Rajak, Son of Late Sanju Rajak.
 16. Naresh Rajak, Son of Ramdeo Rajak.
 17. Vijay Pandit, Son of Late Siya Ram Pandit.
 18. Suresh Pandit, S/o Late Mahadeo Pandit.
 19. Awadhesh Pandit @ Awadhesh Kr. Pandit, Son of Saryug Pandit.
 20. Ghanshyam Pandit, Son of Late Namdhari Pandit.
 21. Ramvilash Pandit, Son of Late Shibdani Pandit.
- All are resident of Village - Chakhusaini, P.S.-Mansi, District-Khagaria.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Munger Division, Munger.
3. The Deputy Collector, Land Reforms, Khagaria.
4. Circle Officer, Mansi, District-Khagaria.
5. Nirmal Kumar Sharma, Son of Late Nath Bihari Sharma, Resident of Village-Chakhusaini, P.S.-Mansi, District-Khagaria.

... .. Respondents

Appearance :



For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha (SC-19)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 12-12-2023

In this case, the petitioners are challenging the order dated 29.03.2019 passed by learned Member (Judicial), Bihar Land Tribunal, Patna in B.L.T. Case No.177 of 2017, by which the B.L.T. Case No. 177 of 2017 filed by the petitioners has been dismissed by the Tribunal. The petitioners are also challenging the order dated 21.12.2015 passed by the Divisional Commissioner, Munger, in B.L.D.R. Appeal No.176 of 2015, by which the learned Commissioner has set aside the order dated 20.02.2014 passed by the learned D.C.L.R. Khagaria and directed him to make demarcation of the land in dispute in presence of the Circle Officer.

2. In the present case, the dispute relates to Khata No.27, Plot No.291, area 1 Bigha and 8 Dhooors as well as Khata No.55, Plot No.317 area 8 khata situated at Mauza- Chak Husaini, P.S.-Mansi, District- Khagarai. Initially, the respondent no.5 filed an application before the Circle Officer, Mansi, for demarcation of the aforesaid land and to fix boundary over the same to resolve the boundary dispute. The Circle officer, after notice, deputed the Anchal Amin for measurement of the land



but the petitioners objected the same. Thereafter, the respondent no.5 filed B.L.D.R. Case No.106 of 2014-15 before the D.C.L.R. Khagaria, who vide order dated 20.02.2014 dismissed the application stating there in that the matter involves complex question of title, so the aggrieved party should go before the competent civil Court. Being Aggrieved by the order dated 20.02.2014 passed by the D.C.L.R. Khagaria, the respondent no.5 filed an application before the Divisional Commissioner, Munger, which was numbered as B.L.D.R. Appeal No.176 of 2015. The Divisional Commissioner vide order dated 21.12.2015 allowed the appeal and directed for demarcation of the land and fixing the pillar over the same in presence of Circle Officer, Khagaria and Anchal Amin. Against the order of the Divisional Commissioner dated 21.12.2015, the petitioners filed B.L.T. Case No. 177 of 2017. The Tribunal vide order dated 29.03.2019 dismissed the B.L.T. Case No.177 of 2015. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the Tribunal in its order has noted the arguments of the respondents that this case is squarely covered by the judgment of this Court rendered in the case of *Maheshar Mandal and Anr. vs. The State of Bihar and Ors.* reported in *2014(3) PLJR*



281 wherein it has been held that claim over a disputed property regarding right, title and interest can only be entertained or decided by the competent authority. The said order was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court after hearing the parties has remanded the matter before this Court for fresh consideration and upon re-examination of the case of Maheshwar Mandal (supra), the Division Bench of this Court reiterated its earlier view which is reported as **2018 (3) PLJR 1007**.

4. Learned counsel for the respondent no.5 has supported the appellate order as well as the order passed by the Bihar Land Tribunal and has submitted that the respondent no.5 had sought the relief for declaration of right and title of his land and the same is maintainable, so the order passed by the Bihar Land Tribunal is just and proper.

5. I have considered the submissions of the parties and perused the materials on record.

6. A Division Bench of this Court in the case of ***Maheshwar Mandal & Anr. vs. The State of Bihar & Ors.*** reported in **2019 (3) PLJR 1007** had considered the various provisions of the Bihar Land Disputes Resolution Act, 2009 in view of the order dated 28.03.2017 passed by the Hon'ble



Supreme Court in Civil Appeal No.4726 of 2017 (State of Bihar & Ors. vs. Maheshwar Mandal and Ors.) and in paragraph nos. 47 to 55 has held as follows:-

“47. *In the present case the Act of 2009 is not conferring or creating a right or liability. The Act 2009 clearly provides for resolution of the disputes which arise under any of the six enactments and have been duly adjudicated under those Acts which are mentioned in schedule-'I' of the Act of 2009. Sub-section (4) of Section 4 of the Act of 2009 is in the nature of curbing and curtaining a pre-existing common law right and, in our opinion purports to oust the jurisdiction of the civil court in respect of the disputes which though arise under any of the six enactments for determination of rights of allottees/settlee or raiyat but has not been finally determined by the civil court of competent jurisdiction. We find that the preamble of the Act of 2009 does not talk of entering into the arena of disputes which are required to be adjudicated by the civil courts. The preamble talks of such disputes with respect to raiyati land or public land allotted in favour of different classes of allottees which should otherwise have been resolved by the Revenue Authorities but are pending in the Civil Courts and the High Courts. The preamble also takes note of the matters connecting to the record of rights, partition of Jamabandi, forcible dispossession of allottees / raiyats, boundary disputes etc. which are administered under the six enactments, therefore, in our opinion, the disputes which arise under any of the six*



enactments are first required to be adjudicated by the court, forum and the authority prescribed under those Acts and it is only when the dispute is determined and then it comes to implement the rights determined under any of the six enactments, the competent authority under the Act of 2009 may entertain such disputes/complaints.

48. *On going through the entire scheme of the Act of 2009, we find that the kind of mischief which was noticed by the Hon'ble Division Bench in the case of Nand Kumar Rai (supra) has occurred in sub-section (4) of Section 4 of the Act of 2009. At the first instance sub-section (4) of Section 4 of the Act of 2009 is a vague provision because in the garb of sub-section (4) of Section 4, contention of the learned A.A.G.IV for the State is that the competent authority can entertain all such complaints which are through with respect to the matters falling under any of the six enactments mentioned in schedule-I, but prior to filing of the complaint before the competent authority the disputes involved therein have not been adjudicated by the competent civil court and the forums mentioned there in those six enactments. This conferment of power of the competent authority to entertain a complaint in respect of matters which are covered under any of the six enactments mentioned in schedule-I of the Act of 2009 would be a kind of mischief. The preamble of the Act of 2009 clearly provides that it is enacted for enforcement of a right conferred by or accrued under above referred six enactments. In fact sub-section (5) of Section 4 on which reliance has been placed by learned A.A.G.-IV to save sub-*



section (4) of Section 4, makes it clear by conferring power upon the competent authority to close such proceedings which appear to him involves complex question of adjudication of title. Here the words 'complex question of adjudication' is a word of wider connotation and it necessarily means that where the competent authority is called upon to adjudicate a question as to title of the land, such question, in absence of any adjudication under any of the six enactments mentioned in schedule-I, has to be taken as a complex question, adjudication of title therefore would not be within the purview of scope and ambit of the powers conferred upon the competent authority. Sub-section (2) and sub-section (3) of Section 4 read with sub-section (5) of Section 4 would make it clear that the competent authority cannot entertain a complaint in respect of disputes which are covered under any of the six enactments under schedule-'I' of the Act of 2009 but has not been decided by a competent civil court and no adjudication can take place at his hand in such matters where he is called upon to decide the question of title.

49. *To that extent Section 3 of the Act 2009 in so far as it talks of application of the procedure prescribed under the Act of 2009 for resolution of disputes covered under any of the aforesaid Act has to be read down to mean and understand that the procedure prescribed under the Act of 2009 shall be applicable to resolve the disputes which arise in course of implementation of a right of a settlee/ raiyats or allottees already determined under any of the six enactments by a*



competent civil court or forum and is brought before the competent authority under the Act of 2009.

50. *We also find from the various clauses of sub- section (1) of Section 4 that Clause (e) talks of the disputes relating to partition of land holding, Clause (g) speaks of disputes with regard to declaration of right of a person, Clause (i) includes the disputes relating to construction of unauthorized construction and Clause (j) takes into its hold the lis pendens transfer.*
51. *In view of what we have discussed hereinabove, the aforesaid clauses occurring under sub- section (1) of Section 4 are to be read and understood limited to the disputes under these heads which have already been determined and adjudicated by a competent civil court or any other court or forum provided under any of the six enactments and the claim made by either parties has been duly adjudicated.*
52. *We would, therefore, declare that Clause (e) which reads "partition of land" has to be read as to the disputes relating to land allotted in a title suit between the parties or otherwise falling in the hand of a party by virtue of an adjudication made by competent court under any of the six enactments. In the garb of Clause (e) the competent authority cannot entertain a complaint based on a claim for partition or share in a land dispute. The disputes relating to partition among the co-sharers, coparceners, and joint owners etc. which are yet not decided by a competent civil court would not be the subject matter of dispute falling in the hand of the competent authority under*



the Act of 2009. So far as Clause (g) of sub-section (1) of Section 4 is concerned, this provision has to be read and understood as a provision whereunder the competent authority would entertain a claim for enforcement of the declarations in favour of a person by virtue of an adjudication made by competent civil court or any other court or forum under any of the six enactments. The competent authority under the Act of 2009 being a Revenue Officer would not create or confer a right in favour of a person which may be duly conferred upon a person or declared in favour of a person by a competent civil court in an adjudication of disputes arising under any of the six enactments.

53. *Further, the word 'A person' would mean an allottee/settlee of land or of raiyat as defined in Clause (f) of Section 2 of the Act of 2009. No person other than an allottee/settlee or raiyat can have an excess to the remedy under the Act of 2009. Similarly Clause (i) of sub-section (1) of Section 4 of the Act of 2009 which talks of "construction of unauthorized structure" should mean and understand only such constructions of unauthorized structure which are standing on the land of a raiyat allotted or settled under any of the above referred six enactments and no other land or structure. So far as unauthorized construction on public land are concerned, those are governed by a specific statute namely, Bihar Public Land Encroachment Act. Clause (j) of sub-section (1) of Section 4 of the Act of 2009 talks of 'lis pendens transfer' which is governed by Section 47 of the Transfer of Property Act and is applicable to a*



civil litigation. In our opinion, the reference of the words 'lis pendens transfer' would mean only such transfer of land of a raiyat or a settlee allotted or settled under any of the aforesaid six enactments pending the adjudication under the concerned Act. The competent authority, in exercise of his power under the Act of 2009 cannot in the garb of Clause (j) entertain a complaint and decide on the legality and validity of a transfer of land during the pendency of a suit or proceedings before the civil court of a competent jurisdiction under any of the six enactment which are all related to land reforms.

54. *We finally conclude that Clause (e), (g), (i) & (j) under sub-section (1) of Section 4 of the Act of 2009 are to be read down in the manner stated hereinabove. So far as sub-section (4) of Section 4 of the Act, 2009 is concerned, in view of the discussions made hereinabove, since we find that sub-section (4) of Section 4 has an effect of taking in its fold any real or imaginary right which may be claimed by a allottee or a settlee or a raiyat not conferred by any of the aforesaid six enactments, the wide powers conferred upon the competent authority is found to be unbridled, unfettered, uncanalized and unguided, hence, they are being grossly abused. It is, therefore not possible to save sub-section (4) of Section 4 of the Act of 2009 by applying the principles of harmonious construction of the statute. Sub-section (4) of Section 4 of the Act of 2009 is therefore held to be arbitrary and unconstitutional.*
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."

7. From reading the law laid down in the aforesaid judgment, it is clear that the competent authority is duty bound to close the proceeding which involve the question of right and title and are in the nature of disputes covered under any of the six enactments mentioned in Schedule-1 of the Bihar Land Disputes Resolution Act, 2009, which have not been adjudicated by a competent Civil Court and 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. In my opinion, in the present case also, until and unless the right, title and interest of the respondent no.5 is decided by a competent civil Court, he cannot move the



competent authority under the Bihar Land Disputes Resolution Act, 2009 for any relief.

8. In view of the aforesaid discussions, this application is allowed. Accordingly, the order dated 29.03.2019 passed by the Bihar Land Tribunal, Patna in B.L.T. Case No. 177 of 2017 and order dated 21.12.2015 passed by the Divisional Commissioner, Munger, in B.L.D.R. Appeal No.176 of 2015 are set aside. The order dated 20.02.2014 passed by learned D.C.L.R. Khagaria, in B.L.D.R. Case No. 106 of 2014-15, by which the respondent no.5 was directed to approach the competent civil Court, is restored.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	12.12.2023
Transmission Date	

