

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2328 of 2023

Vishal Anand Son of Sri Vijay Kumar Singh, Resident of Kewatgama, P.O.-
Kewatgama, P.S.- Kusheshwar Asthan, Anchal- Kisheshwar Asthan East,
District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Commissioner, Darbhanga.
3. The District Magistrate, Darbhanga.
4. The Deputy Collector Land Reforms, Biraul, Darbhanga.
5. The Circle Officer, Kusheshwar Asthan East, Darbhanga.
6. Sri Yogendra Rai @ Yogi Rai Son of Late Choudhary Rai, Resident of Village and P.O.- Kewatgama, P.S.- Kusheshwar Asthan, District- Darbhanga.
7. Bablu Rai Son of Yogendra Rai @ Yogi Rai, Resident of Village and P.O.- Kewatgama, P.S.- Kusheshwar Asthan, District- Darbhanga.
8. Sri Amarjeet Rai Son of Late Nageshwar Rai, Resident of Village and P.O.- Kewatgama, P.S.- Kusheshwar Asthan, District- Darbhanga.
9. Sakal Dev Rai Son of Yogendra Rai @ Yogi Rai, Resident of Village and P.O.- Kewatgama, P.S.- Kusheshwar Asthan, District- Darbhanga.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. P.N. Shahi, Sr. Advocate
	:	Mr. Shivam, Advocate
For the Respondents	:	Mr. Rishi Raj Sinha (SC19)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

9 12-02-2024 Heard Mr. Pushkar Narayan Shahi, learned Senior

Counsel appearing on behalf of the petitioner and Mr. Rishi Raj

Sinha, learned Standing Counsel 19 for the State.

2. The prayer in writ petition is as follows:

*"(i) For setting aside the order dated
17.06.2021 passed by the District Magistrate,
Darbhanga (respondent No. 3) as communicated to
the petitioner vide Memo No. 1091 dated*



18.06.2021 (as contained in Annexure-8) whereby and whereunder the representation filed by the petitioner pursuant to direction issued by this Hon'ble Court vide oral judgment dated 28.01.2021 passed in CWJC No. 8238 of 2020 insofar as removal of encroachment from portion of his lands, has been rejected on the ground that Section 4(4) of the Bihar Land Disputes Resolution Act, 2009 had been declared to be ultra vires vide judgment dated 24.06.2014 passed in Complaint Case no. 1091/2013 (Maheshwar Mandal and Ors. Versus The State of Bihar & Ors) without appreciating the fact that the decision in the case of Maheshwar Mandal after remand from the Hon'ble Supreme Court has again travelled to the Hon'ble Supreme Court and by order dated 30.09.2019 passed in Special Leave to Appeal (Civil) No. 24289 of 2019 (The State of Bihar & Ors. Versus Maheshwar Mandal and Ors.) the judgment dated 31.07.2018 passed in CWJC No. 1091 of 2013 has been stayed and such order has been continued while granting leave by order dated 06.12.2021 by the Hon'ble Apex Court.

(ii) For commanding the respondents to fully implement the order dated 06.01.2020 passed by the Depute Collector, Land Reforms, Biraul, Darbhanga (respondent No. 4) in Case No. 20/2019-20 whereby finding the claim of the petitioner to be correct, he had directed for demarcation of the land of the petitioner fully described in the writ petition after taking help from the Officer-in-charge of Kusheshwar Astahan Police Station.

(iii) For commanding the respondents authorities to remove the partial encroachments made by the private respondents over the land of the petitioner during the pendency of the Land Disputes Resolution Case aforementioned and for granting adequate protection to the petitioner for peaceful enjoyment of his land.

3. Mr. Shahi, learned Senior Counsel has straightaway taken this Court to Annexure-1 i.e. the order of Patna High Court in CWJC No. 8238 of 2020 (disposed on 28.01.2021) in



which a Bench of this Court, after hearing the parties disposed of the writ petition with the following order:

"Heard Mr. Sanjeev Kumar Mishra, learned counsel for the petitioner and Mr. Sajid Salim Khan, learned SC 25 along with Mr. Arif Daula Siddique, learned AC to SC 25, for the State

2. The petitioner has moved the Court for the following reliefs:

(i) For direction upon the respondent authorities to take effective steps to remove the encroachment, made by the private respondents forthwith over the Raiyati plot of the petitioner for which the petitioner has filed series of representation before the different authorities, who are sitting tight over the matter.

(ii) For issuance of writ/order/direction to the respondents for any reliefs, to which the petitioner is found entitled in the facts and circumstances of this case.

(iii) Any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the case be granted to the petitioner."

3. After some arguments, learned counsel for the petitioner drew the attention of the Court to Annexure-7 series which are representations filed by him before the authorities concerned. He drew the attention of the Court particularly to his representation submitted to the District Magistrate, Darbhanga dated 16.02.2019. It was submitted that the writ petition be disposed off with a direction to the District Magistrate, Darbhanga (respondent no. 3) to dispose off the same.

4. Learned counsel for the State does not object.

5. In view thereof, the writ petition stands disposed off with a direction to the respondent no. 3 to pass a reasoned order on the aforementioned representation of the petitioner, if already not done, latest within six weeks from the petitioner serving a copy of this order on him."

4. Thereafter, Mr. Shahi has taken this Court to the



order dated 17.06.2021, passed by the respondent-District Magistrate, Darbhanga, which was issued *vide* memo No. 1091 dated 18.06.2021. In the said order, the respondent no. 3 after quoting an order passed in CWJC No. 1091 of 2013 [***Maheshwar Mandal & Ors. v. State of Bihar***] disposed of on 24.06.2014 by which Section 4(4) of the Bihar Land Resolution Act (henceforth for short, 'the Act') was declared ultra vires] closed the proceedings.

5. He, thereafter, took this Court to specific averment made in paragraphs 19 to 21, which reads as follows:

"(19). That here itself, it is relevant to state and submit that the decision dated 24.06.2014 passed in CWJC No. 1091 of 2013 was set aside by the Hon'ble Supreme Court in Civil Appeal No. 4726/2017 by order dated 28.03.2017 and the matter was remanded back to this Hon'ble Court. Thereafter, by judgment dated 31.07.2018, passed in the said writ petition which is reported in 2018 (2) PLJR 1007, this Hon'ble Court again decided the matter. This Hon'ble Court held that Section 3 of the 2009 Act has to be read down to mean and understand that the procedure under the Act of 2009 shall be applicable to resolve the disputes which arise in course of implementation of a right of a settler/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. This Hon'ble Court further held that Section 4(5) of the Act of 2009 has to be read in consonance with sub-section (2) and sub-section (3) of Section 4 and sub-section (5) of Section 4 has to be taken as a mandatory provision.

(20). That it further appears that the State of Bihar again moved the Hon'ble Supreme



Court against the aforesaid Hon'ble Division Bench judgment of this Hon'ble Court vide Special Leave Petition (C) Diary No. 4199/2019 wherein vide order dated 30.09.2019 the Hon'ble Supreme Court granted stay of the operation of the judgment of this Hon'ble Court passed on 31.07.2018. Thereafter, when the matter was again came up for consideration, by order dated 06.12.2021 passed in Special Leave to Appeal (Civil) No. 24289/2019 the State of Bihar and Ors. Versus Maheshwar Mandal and Ors. Leave was granted and the interim order dated 30.09.2019 whereby the operation of the judgment was stayed, was directed to continue until disposal of the appeal.

(21). That the petitioner has learnt that even the State Government vide Notification No. 345(8) dated 15.09.2021 again restored the power of removal of encroachment conferred upon the D.C.L.R. by virtue of Section 4 of the Bihar Land Disputes Resolution Act, 2009 which by virtue of Section 4(1)(b) authorized the D.C.L.R. to restore the possession in favour of the legally entitled settlee/raiyat.

6. Learned Senior Counsel submits that a bare perusal of the order vis-a-vis the facts on record would show that the respondent-District Magistrate, Darbhanga was completely unaware of the developments that has taken place after the order passed in Maheshwar Mandal case and the fact is that the Hon'ble Apex Court repeatedly had stayed the orders. He as such submits that the matter has to be remitted back and the Collector, Darbhanga will have to give a re-look and pass an appropriate order.

7. Mr. Sinha, learned State Counsel though tried to defend the decision but a bare perusal of the reply filed by the



respondent nos. 3 to 5 duly signed by the Circle Officer, Kusheshwar Asthan, (Darbhanga) would show that the respondent-authorities have tried to sidetrack the statements made in paragraphs 19 and 20 of the petition. The averment made in paragraph 10 of the reply read as follows:

"(10). That with regards to the averments made in Paragraph No. 19 and 20, it is humble submitted that it relates to the decision/verdict of the Hon'ble Apex Court and the Hon'ble High Court. Hence, no comment stating the fact that the respondents have no jurisdiction to make any comment except complying the order of the Hon'ble Court."

8. This Court has gone through the facts of the case, the materials on record as also the submissions put forward by the respective parties. From the facts, it is clear that the case was disposed of by the Collector, Darbhanga, after taking note of the decision of the High Court in **Maheshwar Mandal (Supra)** in which Section 4(4) of the Act was declared ultra vires. However, as per the orders brought on record by way of Annexures-9 & 10, the Hon'ble Apex Court in **SLP (Civil) Diary no. 4199 of 2019** as also **SLP (C. No. 24289 of 2019)** stayed the operation of the order passed in the **Maheshwar Mandal (Supra)** case.

9. Admittedly, on the date the respondent-Collector, Darbhanga passed the order, the Hon'ble Apex Court order was there. This Court has also taken note by the statement made in paragraph 21 not rebutted by the State that subsequently, the



State Government *vide* notification no. 345(8) dated 15.09.2021 taking note of the Hon'ble Apex Court order had restored the power of the removal of encroachment conferred upon the D.C.L.R. by virtue of Section 4 of the Act.

10. In that view of the matter, this Court is convinced that the Collector, Darbhanga has to give a re-look to the entire case. The order *vide* memo no. 1091 dated 18.06.2021(Annexure-8) stands quashed.

11. The matter is remitted back to the respondent-Collector, Darbhanga to hear the case afresh after noticing all the concerned parties and a decision be taken at an earliest preferably within a period of six months from today.

12. The writ petition is disposed of.

(Rajiv Roy, J)

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