

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.690 of 2016
In
Civil Writ Jurisdiction Case No.12904 of 2014

1. Sohan Prasad Son of Late Bhola Mahto

2. Durgesh Prasad Son of Late Mohan Mahto

3. Doman Mahto Son of Bhau Chand Mahto

4. Mossomat Usha Devi wife of Late Kishore Mahto

All residents of village-Gauri Shankar Mandir Colony, Gulzarbagh, Post Office-Gulzarbagh, Police Station-Alamganj, District-Patna.

5. Dudhi Mahto Son of Late Parmeshwar Mahto Resident of village-Khemnichak, Police Station-Ram Krishna Nagar, District-Patna.

... .. Appellant/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Revenue and land Reforms, Government of Bihar, Patna.

2. The Land Reforms, Deputy Collector, Patna Sadar, Patna.

3. The Circle Inspector, Patna Sadar, Patna

4. The Officer-in-Charge, Ram Krishna Nagar, Police Station-Patna, Town and District-Patna.

5. Gajendra Prasad, Son of Late Vimal Prasad.

6. Mahendra Prasad Singh, Son of Vimal Prasad

Both Resident of Village-Bhanwar Pokhar, Bagicha, Police Station-Pirbahore, Town and District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhijeet Gautam, Advocate

For the Respondent/s : Mr. Rajesh Ranjan, Advocate

Ms. Kanika, Advocate

For the State : Mr. Parijat Saurav, A.C. to A.A.G.-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 31-01-2024

The appellants have challenged the order
dated 08.03.2016 passed by the learned Single Judge in CWJC
No. 12904 of 2014 by which the writ petition preferred by the



private respondent nos. 6 and 7 were allowed and the order dated 20.12.2013 passed in Land Dispute Case No. 129 of 2013-14 was set aside remitting the matter back to the concerned respondent.

2. The matrix of facts giving rise to the present appeal is/are as follows:-

3. The writ petition vide CWJC No. 12904 of 2014 was preferred by the respondent nos. 5 and 6 herein being aggrieved by the order dated 20.12.2013 passed by the respondent no. 2 in the Land Dispute Case no. 129 of 2013-14 by which it declared the title and possession of the 1st appellant over the plot bearing khata no. 75, khesra no. 8, Mauza-Khemnichak, Thana No. 112 having an area of 1 acre 36.5 decimal in the city of Patna (henceforth for short 'the land in question') as also its consequential order; on the ground that without issuance of any notice to them, the order in question was passed despite the fact that they are/were co-owners of 68.25 decimals of the said land.

4. The claim of the writ petitioners-respondent nos. 5 and 6 herein was/were that their mother namely, Kavilasho Devi had acquired 68.25 decimal of 'the land in question' by the registered sale deed on 16.05.1964 whereafter



the family came into the possession of the said land. The mutation of the plot was also completed and receipt issued in the name of their mother. After the death of the writ petitioner's mother in the year 1988 and their father in the year 1999, they jointly inherited the land in question whereafter the mutation was also done in their favour.

5. However, to their surprise, on 12.07.2014, the respondents with the help of the police force came and tried to take possession of the land. Upon opposition, they retreated. It was only thereafter that they came to know about the disposal of the Land Dispute Case No. 129 of 2013-14 instituted by the respondent nos. 5 to 10 (the appellants herein) claiming that their ancestors had acquired 1 acre 36.5 decimal of 'the land in question'. The specific contention of the writ petitioners was/were that though other respondents were impleaded in the said land dispute case, but deliberately, the writ petitioners were left out and they ensured that an order is passed behind their back.

6. Upon notice, in the writ petition, the respondent nos. 5 to 10 (the appellants herein) appeared and the submissions put forward by them was/were that:

(i) the writ petition is not maintainable;



(ii) they have alternative remedy before the appellate authority;

(iii) they are claiming right and title with respect to 'the land in question' which does not come within the ambit of section 4 of the Bihar Land Disputes Resolution Act, 2009 (henceforth for short 'the 2009 Act');

(iv) hence the writ petition is fit to be dismissed.

7. The Writ Court having gone through the facts of the case and the materials on records as also after hearing the parties put specific question to the respondent nos. 5 to 10 (the appellants herein) as to whether the petition has been preferred under section 4 or under section 13 of 'the 2009 Act' for declaration of their right and title over the lands in question or not, the answer was that it was filed under section 13 of 'the 2009 Act'.

8. Having been convinced that deliberately the writ petitioners were not made party though prayer was made for declaration of right and title over the land in question and the same was not preferred under section 4 rather under section 13 of 'the 2009 Act'; the Court vide an order dated 08.03.2016 held that the:



- (i) order in question has been passed ex-parte;
- (ii) the petition ought to have been filed under section 4 and not under section 13 of 'the 2009 Act';
- (iii) the writ petitioners were not impleaded as party-respondents despite the fact that they had raised their claim regarding 'the land in question';
- (iv) in that circumstance and in the interest of justice, they be given an opportunity to raise the claim before the competent authority.

9. Accordingly, the Writ Court quashed the order dated 20.12.2013 passed in Land Dispute Case no. 129 of 2013-14 by the respondent-DCLR, Patna Sadar, Patna remitting the matter back with a direction to decide it afresh strictly in accordance with 'the 2009 Act' after hearing all the parties.

10. The Writ Court while allowing the writ petition made it clear that the parties are at liberty to raise all the issues available to them and it has not made any observation on the merit of the case.

11. Aggrieved, the present appeal. Learned Counsel for the appellants submit that:

- (i) in case the writ petitioners were aggrieved by the order dated 20.12.2013, they had the remedy of filing



appeal before the Divisional Commissioner, Patna. Instead, they preferred writ petition which was not maintainable;

(ii) as the writ petitioners have no valid papers, they were rightly not impleaded as parties in the Land Dispute Case;

(iii) the counter affidavit filed by the appellants herein were ignored by the Writ Court while passing the order in question;

(iv) the observation made by the DCLR, Patna Sadar, Patna was not taken into account;

(v) as such, the appeal is fit to be allowed.

12. Learned Counsel appearing for the respondent nos. 5 and 6, on the other hand, has justified the order passed by the Writ Court and submits that when they are/were in possession of 68.25 decimal of land since 1964 on the basis of a valid sale deed executed in favour of their mother which followed the mutation of the land, without impleading them as party-respondents in the Land Dispute Case, the appellants deliberately tried to usurp their land. It is his submission that the learned Writ Court in the aforesaid circumstances rightly held that the appellants preferred the petition under section 13 of 'the 2009 Act' for the declaration of



their right and title over the land and not section 4 of 'the 2009 Act' while allowing the writ petition.

13. Learned Counsel referred to Section 13 of 'the 2009 Act' which read as follows:-

“13. Procedure for resolution of disputes.-*(1) Any aggrieved person may file an application or complaint before the Competent Authority within whose Jurisdiction the disputed land or structure is situated.*

(2) On receipt of the application or complaint, the Competent Authority shall proceed to issue notice to the parties concerned allowing them a fortnight's time from receipt of the notice to file their response and documentary evidence, if any.

(3) After the response is filed by the opposite party, the Competent Authority may allow one week's time to the applicant or the complainant to file his rejoinder, documentary evidence, if any, and a list of witnesses, if any, to be examined by him.

(4) After completion of the pleading, the competent authority shall hear the parties and dispose off the case on the basis of pleading of the parties if no further evidence or local enquiry is needed.

(5) If local enquiry is required, the Competent Authority may himself hold the



enquiry or authorise any other public servant or Advocate to conduct the local enquiry and submit the report. The Competent Authority may also issue commission for local enquiry.

(6) If the Competent Authority considers it necessary to examine witnesses then he shall afford opportunity to the parties to dispute to produce witnesses in support of the application or complaint and in rebuttal thereof. The Competent Authority shall ensure that witnesses are produced by the parties to the dispute without undue delay and shall also ensure that the examination of witnesses is conducted on day to day basis.

(7) The Competent Authority, on conclusion of the hearing, perusal of report of local inquiry if any, and on examination of witnesses if any, shall finally hear the parties and pass appropriate order in accordance with law.

(8) The Competent Authority shall follow the above procedure where he takes cognizance of cases on reference made by a prescribed authority or officer.

(9) The Competent Authority may pass an interim order of injunction in case of threatened, unauthorised and unlawful dispossession or unauthorized and unlawful demolition of structure constructed over the land in dispute.

(10) The Competent Authority shall dispose off cases by passing a reasoned order.



(11) Detailed dispute resolution procedure shall be prescribed by the Government by making suitable Rules.”

14. Further, section 4 of ‘the 2009 Act’ read as follows:-

“4. Jurisdiction and authority to resolve disputes.- (1) *The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes:-*

(a) Unauthorised and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him [or under any Act or Policy of the State or Central Government providing for settlement of Government land to the persons of any specified category] under any Act contained in Schedule -I to this Act by issuance of any settlement document/parcha by a Competent Authority;

(b) 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;

(c) Threatened dispossession of a legally entitled settlee/allottee;



(d) any of the matters enumerated in (a), (b) and (c) above appertaining to raiyati land;

(e) Partition of land holding;

(f) Correction of entry made in the Record of Rights including map/survey map;

(g) Declaration of the right of a person;

(h) Boundary disputes;

(I) Construction of unauthorized structure; and

(J) Lis pendens transfer.

(2) The Competent Authority shall not have jurisdiction to review or reopen any finally concluded and adjudicated proceeding under any of the acts contained in Schedule-1. The Competent Authority shall exercise his authority for resolving the dispute brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in Schedule-1 of this Act.

(3) The Competent Authority shall not have jurisdiction to adjudicate any fresh rights of allottee/settlee or a raiyat which is not yet determined and is required to be determined in accordance with provisions contained in any of the Acts contained in Schedule-1:

Provided that where rights of allottee / settlee or raiyat are already determined under any of the Acts contained in Schedule-1, the



Competent Authority shall have jurisdiction to entertain cases appertaining to matters enumerated in sub-section (1).

(4) Notwithstanding anything contained in sub-section (2) and (3) hereinabove, if no provision is made in any of the Acts contained in Schedule-1 for determination of rights of allottee/settlee or raiyat and claimed right is yet to be determined, it shall be open to the Competent Authority to finally determine such right.

(5) The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.”

15. He further submits that after remand by the Writ Court, the case already stands disposed of from the Court of the respondent no. 2.

16. We have heard the parties, perused the materials on record as also the order dated 08.03.2016 passed by the learned Single Judge. The admitted fact on record is that the respondent nos. 5 and 6 were in possession of ‘the land in question’, the appellants preferred petition before the respondent no. 2 under section 13 of ‘the 2009 Act’ and despite the fact that the writ petitioners were necessary parties, they were not



impleaded as such. An order was taken behind their back and upon knowledge and having been threatened of eviction from 'the land in question', the writ petitioners (respondent nos. 5 and 6) preferred writ petition.

17. The learned Single Judge after taking into account the entire facts and after noting that the appellants herein conceded that they had made prayer for their declaration of right and title over 'the land in question' under section 13 of 'the 2009 Act' and in that background as also having taken note of the fact that the respondent nos. 11 to 14 who were made respondents were never served notices and the entire proceeding was conducted behind their back the order dated 20.12.2013 passed in Land Dispute Case no. 129 of 2013-14 was set aside and direction was given to consider the case in accordance with law and after hearing all the parties including the writ petitioners (respondent nos. 5 and 6).

18. The Writ Court took extreme caution and recorded that any observation made in the order was only for the disposal of the writ petition and shall in no manner prejudice either of the parties before the competent authority.

19. We have also noticed the submissions put forward by learned Counsel for the respondent nos. 5 and 6 that



after the matter was remitted, the case before the concerned respondent already stands disposed of, a fact not rebutted by the appellants.

20. The principle of natural justice was overlooked, the writ petitioners were deliberately not made party-respondents in the Land Dispute Case despite the fact that they were in possession of the land, the petition was preferred by the appellants under section 13 of ‘the 2009 Act’; the respondents 11 to 14 though made parties were never put on notice and an order was taken behind their back, in the said circumstance, the Writ Court was fully justified in holding that the writ petitioners be heard while remitting back the matter.

21. We find absolutely no reason to interfere with the just and proper order passed by the Writ Court. The LPA No. 690 of 2016 is dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

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CAV DATE	
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