

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10680 of 2014

=====

Daya Nand Sah son of Late Mishri Lal Sah, Resident of village- Kasba Aahar,
P.S.- Tajpur, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The D.C.L.R., Samastipur
3. Md. Tajuddin son of Late Md. Shamshul Haque, Resident of village- Kasba Aahar, P.S.- Tajpur, District- Samastipur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Md. Najmul Hodda, Advocate Mr. Abdul Manan Khan, Advocate Mr. Allam a Abdul Quadir, Advocate Mr. Jamal Fazili, Advocate Md. Hafiz Shahbaz, Advocate
For the State	:	Mr.Sunil Kr. Mandal, SC-3 Mr. Arjun Prasad, AC to SC-3

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 10-07-2024

The present writ petition has been filed for quashing the order dated 08.01.2014, passed by the learned Deputy Collector Land Reforms, Samastipur, in Land Dispute Case No.130 of 2013 whereby and whereunder the right, title and interest of the petitioner in the land in question has been interfered with by erroneously interpreting the sale deed in question.

2. It is submitted by the learned counsel for the petitioner that the civil rights of the parties under a sale deed can neither be interpreted/decided nor interfered with by the learned



Deputy Collector Land Reforms under the provisions of the Bihar Land Disputes Resolution Act, 2009 and moreover, it is the duty of the competent authority to close the proceeding which involves question of right and title, in view of the judgment rendered by the learned Division Bench of this Court in the case of ***Maheshwar Mandal & Anr. vs. the State of Bihar & Ors.***, reported in ***(2018) 3 PLJR 1007***, paragraph nos. 50, 52, 54 and 55, whereof are reproduced hereinbelow:-

“50. We also find from the various clauses of subsection (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.

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.

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.”

3. *Per contra*, the learned counsel for the respondent-State has not disputed the aforesaid position as is existing in law. As far as the respondent no.3 is concerned, though vakalatnama has been filed on his behalf by his duly appointed attorney, however, regularly there has been no representation on his behalf on the earlier occasions.

4. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the competent authority under the provisions of the Bihar Land



Disputes Resolution Act, 2009 is barred from proceeding with such a proceeding which involves question of title and right, as has been held by the learned Division Bench of this Court in the case of ***Maheshwar Mandal*** (supra). As far as the present case is concerned, the learned Deputy Collector Land Reforms, Samastipur, by the impugned order dated 08.01.2014 has wrongly interpreted the sale deed in question and has erroneously interfered with the title and right of the petitioner, which is not permissible under the provisions of the Bihar Land Disputes Resolution Act, 2009, as also has been prohibited by the judgment rendered by the learned Division Bench of this Court in the case of ***Maheshwar Mandal*** (supra), hence the impugned order dated 08.01.2014, passed by the learned Deputy Collector Land Reforms, Samastipur, in Land Dispute Case No.130 of 2013, is not sustainable in the eyes of law, thus is quashed.

5. The writ petition stands allowed.

(Mohit Kumar Shah, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2024
Transmission Date	NA

