

Patna High Court - Orders

Maheshwar Mandal & Anr vs The State Of Bihar & Ors on 24 June, 2014

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1091 of 2013

With

Interlocutory Application No. 1572 of 2013

In

Civil Writ Jurisdiction Case No. 1091 of 2013

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1. Maheshwar Mandal S/O Late Bachchi Mandal

2. Sanjay Mandal S/O Maheshwar Mandal, both resident of Village Sahebganj, P.S., P.O. and Anchal- Narpatganj, Subdivision- Forbesganj, District Araria Petitioners Versus

1. The State of Bihar

2. Divisional Commissioner, Purnea

3. Land Reforms Deputy Collector, Forbesganj, Araria Respoondents 1st Party

4. Smt. Jashoda Devi, wife of Gosain Mandal, resident of Village Sahebganj, P.S., P.O. and Anchal- Narpatganj, Subdivision- Forbesganj, District Araria Respondent 2nd Party

===== Appearance :

For the Petitioners	:	Mr. Yogendra Mishra & Mr. Uma Kant Tiwary, Mr. Binod Kumar, Advocates
For Respondent No. 4 :		Ms. Kumari Ritambhara, Advocate
For the State	:	Mr. Lalit Kishore, PAAG with Mr. Piyush Lall, AC to PAAG Mr. Ram Kishore Singh, AC to AAG 7 & Mr. Syed Hussain Majeed, AC to AAG 7 Ms. Shashi Priya Pathak, AC to AAG 7

===== CORAM:
HONOURABLE THE CHIEF JUSTICE And HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH C.A.V JUDGMENT (Per: HONOURABLE THE CHIEF JUSTICE)

12. 24.06.2014 This Petition under Article 226 of the Constitution has been filed by a father and the son Maheshwar Mandal and Sanjay Mandal to challenge the order dated 27th December 2011 made by the Competent Authority-cum-Deputy Collector Land Reforms, Forbesganj, Araria in B.L.D.R. Act Case No. 91 of 2011-12 in exercise of power conferred by the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as "the Act of 2009"). The petitioners have also challenged the constitutional validity of the Act of 2009.

One Jashoda Devi, the respondent no. 4, wife of one Gosai Mandal approached the Competent Authority under the Act of 2009 for a declaration that she is the owner of the disputed parcels of land (hereinafter referred to as "the suit land") and that she is entitled to the possession of the suit land. She complained that the petitioners herein had forcibly dispossessed her. She, therefore, be put in possession of the suit land. The case was contested by the writ petitioners. According to them, the suit land was part of the lands inherited by the petitioner no. 1 and his brothers from their father Bachchi Mandal. It was the ancestral property inherited from the original owner Babujan Mandal. The sons of Bachchi Mandal were the joint owners of the land. The plaintiff, Jashoda Devi was the wife of one of the brothers. She claimed title over the suit land through a sale purportedly made by the late Bachchi Mandal on 22nd December 1995. According to the petitioners, the said sale was later on cancelled on 29th February 1996. The land continued to be the joint property of the six brothers and was partitioned amongst them on 12th April 2009 under a partition deed.

The Competent Authority-cum-Deputy Collector Land Reforms, Forbesganj (hereinafter referred to as "the Competent Authority") held that the deed of cancellation of sale was not a valid document and that the plaintiff, Jashoda Devi was the lawful owner of the suit land. In view of the said finding, the Competent Authority issued direction to the petitioners to handover possession of the disputed parcels of land to the plaintiff, Jashoda Devi, the respondent no. 4 herein. The said order of the Competent Authority has been confirmed by the Divisional Commissioner, Purnea Division, Purnea on 8th August 2012 in Land Dispute Appeal No. 69 of 2012. Therefore, this Petition.

Learned advocate Mr. Yogendra Mishra has appeared for the petitioners. He has assailed the provisions contained in the Act of 2009. He has submitted that the provisions contained in the Act of 2009 divest the Civil Court of its function of adjudicating the question of title over the land. The Act of 2009 also confers unfettered and unbridled power upon the Competent Authority. Mr. Mishra has strenuously urged that the State legislature has no authority to confer power upon the executive to adjudicate civil disputes which is traditionally conferred upon the Civil Court under the Code of Civil Procedure. In support of his submission, he has relied upon Section 9 of the Code of Civil Procedure and a Full Bench judgment of this Court in the matter of Nand Kumar Rai & Others Vs. State of Bihar & Others [AIR 1974 Patna 164].

The Petition is contested by the State Government.

Learned advocate Mr. Ram Kishore Singh has appeared for the State Government. He has relied upon Entry 18 of the State List of Schedule VII to the Constitution of India, the Bihar Tenancy Act, 1885 and the judgment in the matter of Smt. Basmati Devi Vs. Smt. Anju Kumari [2012 (3) PLJR 214]. He, however, concedes that in the present case the Competent Authority has exceeded his jurisdiction.

In view of challenge to the constitutional validity of the Act of 2009, we have heard learned Principal Additional Advocate General, Mr. Lalit Kishore on behalf of the State Government. Mr. Lalit Kishore has contested the challenge to the constitutional validity of the Act of 2009. He has taken us through the various provisions of the Act of 2009. He has submitted that the Act empowers the Competent Authority to enforce the rights conferred by or accrued under the six enactments mentioned in

Schedule I to the Act of 2009. The power vested in the Competent Authority is, therefore, required to be read as confined to the enforcement of the rights conferred by or accrued under the aforesaid six enactments alone; and if so read, none of the provisions of the Act of 2009 can be said to be unconstitutional. Mr. Lalit Kishore has submitted that the petitioners have not challenged a particular provision/s of the Act of 2009, but the challenge is general and vague. He has submitted that unless the State legislature lacks the legislative competence to make the enactment, the enactment cannot be said to be unconstitutional. He has further submitted that to challenge any provision as unconstitutional one has to establish contravention of the provisions contained in the Constitution. In the present case it is not the case of the petitioners that any of the provisions contained in the Act of 2009 is unconstitutional in any manner. Mr. Lalit Kishore has next submitted that the provisions contained in the Act of 2009 are specific and unambiguous. Such provisions are required to be interpreted as they are. The rule of construction of legal provisions does permit reference to the preamble of the enactment, but no provision can be held to be ultra vires the preamble of the enactment. Mr. Lalit Kishore has meticulously taken us through each provision particularly Section 4 and various clauses under Sub-section (1) of Section 4 of the Act of 2009.

In support of his submissions, Mr. Lalit Kishore has relied upon the judgments of the Hon ble Supreme Court in the matters of M/s Burrakur Coal Co. Ltd. Vs. The Union of India and Others {AIR 1961 Supreme Court 954, Mohan Lal Vs. Kartar Singh and Others {1995 Supp (4) Supreme Court Cases 684, Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others {(2001)4 Supreme Court Cases 139} and Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Others {(1993) 3 Supreme Court Cases 161}.

In the matter of M.s Burrakur Coal Co. Ltd. (supra) the very issue of interpretation of statute was the subject matter of consideration by the Constitutional Bench of the Hon ble Supreme Court. The Hon ble Court held, "it is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. ... We cannot, therefore, start with the preamble for construing the provisions of an Act, though, we would be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application."

In the matter of Mohan Lal (supra) a similar provision for summary enquiry by collector was the subject matter of challenge before the Hon ble Supreme Court. The Hon ble Court observed, "Though the enquiry is summary it is judicial in nature. Therefore, merely because the Collector acting under section 43 has to make a summary enquiry, it cannot be said that he can decide only simple questions as regards the nature of possession and not those questions which are complicated but have a bearing on the nature of possession."

In the matter of Union of India (supra) challenge was directed to the Textile Undertakings (Taking Over of Management) Act, 1983. The Court observed, "There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has

transgressed constitutional mandate, such as those relating to fundamental rights is always on the person who challenges its vires". The Hon'ble Court further held, "The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions."

In the matter of Shiv Kumar Chadha (supra) challenge was against the bar imposed upon the Civil Court to entertain matters under the Delhi Municipal Corporation Act, 1957.

Learned advocate Ms. Kumari Ritambhara has appeared for the respondent no. 4-plaintiff. She has supported the orders of the authorities below.

True, the petitioners have not raised a specific challenge to a particular provision/s. The challenge to the constitutional validity of the Act of 2009 is too general and vague. The sole reliance is placed on the Full Bench judgment in the matter of Nand Kumar Rai & Others (supra). Mr. Yogendra Mishra appearing for the petitioners has failed to establish that any of the provisions of the Act of 2009 is unconstitutional; nor it is the plea of Mr. Mishra that the Act of 2009 has been enacted by the State legislature without the legislative competency. Nevertheless, I do feel that there are certain provisions in the Act of 2009 which, strictly speaking though are not unconstitutional, do require reading down.

As the Act of 2009 is under challenge before us, we shall first examine the objects and reasons of the Act of 2009 and its provisions.

The preamble of the Act of 2009 reads as under :-

"WHEREAS, in the State of Bihar, disputes relating to record of rights, boundaries, entries in revenue records, unlawful occupation of raiyati land and forcible dispossession of allottees and settlees of public land, generate problems and cause unnecessary harassment to bona fide allottees/settlees, raiyats or occupants;

WHEREAS, such 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 and which should otherwise have been resolved by the Revenue Authorities, who may be better equipped to deal with such disputes having regard to their continued presence in the field offices and their expertise in Revenue Administration, WHEREAS, in larger public interest it is deemed necessary to provide for effective and speedy mechanism to resolve such disputes which give rise to major turbulence if not addressed immediately and effectively;

AND, WHEREAS, it has been found in analysis of data relating to nature of disputes that they mostly appertain to matters connected with the Record of Rights, partition of jamabandi, forcible dispossession of allottees/raiylats, boundary disputes etc. and in this context, the administration of the following Acts is involved:

- (1) The Bihar Land Reforms Act, 1950,
- (2) The Bihar Tenancy Act, 1885,

- (3) The Bihar Privileged Persons Homestead Tenancy Act, 1947,
- (4) The Bihar Bhoodan Yagna Act, 1954,
- (5) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961,

(6) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, AND, WHEREAS, different forums and procedures have been provided for the resolution of disputes under the above referred Acts and it is considered expedient to provide a uniform and common forum, procedure and mechanism which would achieve the objective of effective, efficacious and speedy resolution of disputes."

Section 2 of the Act of 2009 defines various terms and phrases used in the Act. Clause (a) defines, "'Competent Authority" shall be the Deputy Collector Land Reforms or any officer assigned to discharge the function and duties of the Deputy Collector Land Reforms in the Sub-division". Clause (d) defines, "'Land" connotes Government land, raiyati land, with structure, if any". Clause (e) thereof defines, "'Allotted Land or Settled Land" connotes the land which is allotted or settled or on which raiyati rights have accrued under any of the Acts mentioned in Schedule-1 of this Act". Clause

(f) thereof defines, "'Allottee or Settlee" connotes the person with whom land has been settled by the competent authority or the person who has acquired raiyati rights over the land, under any of the Acts contained in Schedule-1 of this Act". Clause (g) thereof defines "'Raiyat" connotes a raiyat as defined under the provision of the Bihar Tenancy Act, 1885". Section 3 of the Act of 2009 gives the Act of 2009 overriding effect over the procedure prescribed under (i) The Bihar Land Reforms Act, 1950, (ii) The Bihar Tenancy Act, 1885, (iii) The Bihar Privileged Persons Homestead Tenancy Act, 1947, (iv) The Bihar Bhoodan Yagna Act, 1954, (v) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961, (vi) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. Section 4 thereof provides for the jurisdiction of the Competent Authority. Sub-section (1) thereof empowers the Competent Authority, interalia, to resolve the disputes arising out of

(a) 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 of 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 of 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. Sub-section (3) thereof imposes specific bar upon the Competent Authority in respect of the fresh rights of allottee/settlee or a raiyat which is not yet determined and is required to be determined in accordance with the provisions contained in any of the aforesaid six enactments. Sub-sections (2) to (5) thereof read as under :-

"(2) The Competent Authority shall not have jurisdiction to review or reopen any finally concluded and adjudicated proceeding under any of the Act 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."

Section 5 of the Act confers certain powers of Civil Court upon the Competent Authority. Section 6 of the Act provides, "in all cases of civil nature, concerning a land or a portion thereof, and in which one of the parties to the case is an allottee or settlee under Section-2 of the Act, the State shall be a necessary party". Section 7 of the Act enjoins the Competent Authority to dispose of all cases summarily in accordance with the Act and Rules framed thereunder. Section 9 of the Act provides for expeditious resolution of disputes. Section 12 of the Act empowers the Collector to exercise power of supervision and control over the Competent Authority. Section 15 of the Act enjoins the Competent Authority to execute its orders. Section 16 of the Act confers power, interalia, of attachment of the standing crop upon the Competent Authority.

It is apparent that the Act of 2009 has been enacted with a laudable purpose of giving quick relief to the allottees and settlees who have earned a right or to whom a right has accrued under any of the aforesaid six enactments. That is why Section 3 of the Act of 2009 gives that Act overriding effect over the procedure prescribed under any of the said six enactments. Thus, in my view, the scope and ambit of the Act of 2009 is limited and is circumscribed to the extent of enforcement of rights conferred by or accrued under the aforesaid six enactments. In other words, it is an enactment for execution of the orders made under the above referred six enactments. This intention is reinforced by Sub-section(2) of Section 4 of the Act of 2009 insofar as it expressly provides, "Competent

Authority shall exercise his authority for resolving the dispute brought before him on basis of any final order passed by any of the authorities empowered to do so under the Acts contained in Schedule-1 of the Act". Similarly, Sub-section (3) thereof expressly prohibits the Competent Authority from exercising its jurisdiction to adjudicate any fresh rights of allottee or settlee or a raiyat not yet determined under any of the aforesaid six enactments. Thus, the legislative intent to confine the Act of 2009 to execution of the orders made under the aforesaid six enactments is clear and unambiguous. Having thus circumscribed the powers of the Competent Authority under the Act of 2009, the mischief has crept in in Sub-sections (4) & (5) of Section 4 of the Act of 2009. The said Sub-section (4) of Section 4 of the Act of 2009 enables the Competent Authority to determine the rights of allottees or settlees or raiyats which are not yet determined. Similarly, Sub-section (5) of Section 4 of the Act of 2009 confers a discretionary power upon the Competent Authority either to adjudicate complex questions of title himself or to allow the parties to seek remedy before the Civil Court. But for Section 4(4) of the Act of 2009, the Competent Authority is not vested with power of adjudication under any of the other provisions of the Act of 2009. The Act which is designed to execute the orders made or to enforce the rights accrued under any of the aforesaid six enactments, has been converted into a substantive or adjudicating enactment by Section 4(4) of the Act of 2009. The power of adjudication conferred under the aforesaid Sub-sections (4) & (5) of Section 4 of the Act of 2009 are largely misused. The power, which is confined to the disputes in relation to the allottees or settlees or raiyats, is exercised in respect of any dispute including the complex issues of title. Though there is no express bar against the jurisdiction of the Civil Court, the said sub-sections practically take away the jurisdiction of the Civil Court to entertain and adjudicate the disputes relating to the title to the land.

It is apparent that the Act of 2009 has been enacted with an intention to give immediate relief to the allottees and the settlees whose rights are crystallized under any of the six enactments mentioned in Schedule-1 to the Act of 2009. It is, therefore, necessary that any person approaching the Competent Authority under the Act of 2009 must have a right settled or accrued to him or her under any of the aforesaid six enactments. In other words, the plaintiff has to be the allottee or a settlee of the land under any of the aforesaid six enactments and seeks enforcement of a right crystallized in favour of the plaintiff or accrued to the plaintiff under any of the aforesaid six enactments. It is such a claim alone which can be entertained by the Competent Authority under the Act of 2009. This opinion of mine is corroborated by Section 6 of the Act which makes it mandatory that in all such cases the State Government shall be a necessary party. The preamble of the Act is clear and discloses the intention of the legislature in enacting the Act of 2009. It says, "disputes with respect to raiyati land or public land allotted in favour of different classes of allottees.....". Preamble of the Act of 2009 further refers to disputes in relation to, "the Record of Rights, partition of jamabandi, forcible dispossession of allottees/ raiyats, boundary disputes etc." In context of the above referred six enactments, Section 3 of the Act of 2009 gives the overriding effect to the Act of 2009 in respect of the procedure prescribed in the above referred six enactments. This seemingly unfettered and unbridled power of adjudication has been misused by the Competent Authority to resolve disputes of title to the land which traditionally are required to be resolved by a Civil Court. In the present case, the respondent no. 4, the plaintiff, asserted her right to land under a sale deed. Neither she is an allottee nor a settlee nor does the dispute arise from any right crystallized or accrued under any of the aforesaid six enactments. The Competent Authority has clearly exceeded his jurisdiction and

has usurped the jurisdiction of the Civil Court.

Incongruity in legislative drafting of sub-sections (3) & (4) of Section 4 of the Act of 2009 is evident. But then, that is the way the legislature functions. On one hand Sub-section (3) of Section 4 of the Act of 2009 expressly debars the Competent Authority from adjudicating any fresh rights of allottee, settlee or a raiyat which is not determined or which is required to be determined in accordance with the provisions contained in any of the aforesaid six enactments. On the other hand, in stark contradiction, sub-section (4) of Section 4 of the Act of 2009 enables the Competent Authority to finally determine the rights of allottee, settlee or raiyat not yet determined. It is this sub-section (4) which is the mischief monger. Although it refers to the rights of allottee, settlee or raiyat, the broad language used by the legislature is largely misused to usurp the power not conferred by the Act of 2009 and to determine the rights claimed by the persons other than allottee, settlee or raiyat and the rights claimed outside any of the aforesaid six enactments. This wide amplitude granted under sub-section (4) calls for intervention by this Court and reading down of the sub-section (4) to bring it in consonance with the other provisions of the Act of 2009.

Similarly, sub-section (5) of Section 4 of the Act of 2009 also is a mischief monger. Once jurisdiction of the Competent Authority is confined to the execution of the orders made or enforcement of rights accrued under any of the aforesaid six enactments, sub-section (5) of Section 4 of the Act of 2009, by necessary implication, allows the Competent Authority to entertain matters not arising out of the aforesaid six enactments and issues invoking complex questions of adjudication of title. The complex issues of title can never be decided in a summary proceeding envisaged by the Act of 2009. The said sub-section (5) also has the tendency to convert the power of execution of orders into the power of adjudication. The said sub-section (5) also requires to be read down to bring it in consonance with the other provisions contained in the Act of 2009.

A Full Bench of this Court in the matter of Nand Kumar Rai (supra) had the occasion to examine the constitutional validity of Section 109 of the Bihar Tenancy Act, 1885 as it stood after its amendment under the Act 6 of 1970. It appears that under the said amendment the legislature barred the jurisdiction of the Civil Court in respect of any application or suit concerning the preparation or publication of record or rights or settlement of rent or preparation of Settlement Rent Roll or for alteration of any entry in any such record or for the determination of the incidents of any tenancy.

The said enactment was challenged on the ground that it was a fraud on the legislative power of the State and was enacted in colourable exercise of that power and that the impugned provisions were arbitrary. The Bench held that clause (d) of sub-section (1) and sub-section (2) of Section 109 of the Act introduced by Bihar Act 6 of 1970 were constitutionally invalid. The said clause (d) of sub-section (1) and sub-section (2) of Section 109 of the Act barred the jurisdiction of the Civil Court in the following terms :-

"(d) for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof in which correctness of any entry in any such record or roll is expressly or impliedly challenged or in which determination of incidents of any tenancy is involved.

(2) Suit for declaration of title to or recovery of possession of or confirmation of possession over any holding or tenancy or part thereof, in which correctness of any entry in any record-of-rights or Settlement Rent roll is expressly or impliedly challenged or in which determination of incidents of any tenancy is involved may be instituted before the Collector or any Revenue Officer specially empowered by the State Government by notification in this behalf who shall dispose of the suit in the prescribed manner."

The Bench held, "It is difficult to conceive how complicated title suits would be speedily and summarily disposed of by Revenue Courts and how the under-raiyats would be benefited thereby. I can take judicial notice of the fact that a large number of title suits have been filed throughout the State of Bihar wherever Revisional Survey operations have taken place. I am also aware that the number of Civil Courts is too small to dispose of such large number of title suits. I am, however, also aware of the fact that the number of Revenue Courts is also not sufficient, rather too small to dispose of such a large number of complicated title suits. They will be simply unable to decide them unless they technically choose to literally dispose of the suits by any means; no Court by a judicial approach will be able to dispose of such a large number of suits. I am, however, not concerned with the wisdom behind this legislation. I am concerned merely with its constitutional validity. In procedural matter suits of lighter vein have been allowed to be brought to the High Court and complicated suits are to be finally disposed of by the Revenue authorities. I also do not see any justification for making a distinction between title suits for declaration of title and possession and suits of other types such as partition or mortgage suits."

In my opinion, a similar mischief is found in the Act of 2009 where the competent authority is allowed to entertain and summarily decide the rights which are not crystallized under any of the aforesaid six enactments and to entertain and decide complex issues of title to the land under sub-sections (4) & (5) of Section 4 of the Act of 2009.

The Act of 2009 is clear and explicit insofar as its scope and ambit are concerned. It is repeatedly emphasized that the Act of 2009 has been enacted for enforcement of a right conferred by or accrued under the above referred six enactments. It would not be out of place to note that all the above referred six enactments relate to land reforms and are pretty old. The said Acts are in force for more than fifty years. Most of the issues must have been settled by now. It may be only residuary matters which may still require to be adjudicated/enforced. No claim to a property or a dispute relating to a property can be entertained or decided by the Competent Authority under the Act of 2009 to resolve disputes other than the ones arising from the above referred six enactments.

In my opinion, clause (e) of Sub-section (1) of Section 4 of the Act of 2009 which reads, "Partition of land" has to be read as the dispute relating to the land allotted or settled under any of the above referred six enactments and the claim made by an allottee/ a settlee or a Raiyat. The said clause (e) will not cover each and every issue relating to any land and the partition between the co-sharers,

co-parceners, joint owners etc. of such land. Similarly, clause (g) of Sub-section (1) of Section 4 of the Act of 2009 which provides for "Declaration of the right of a person" also requires to be read down. Again the right referred to in the said clause (g) has to be a right conferred by or accrued under any of the aforesaid six enactments and none other. „A person” would mean an allottee/ a settlee of a land or a Raiyat as defined in clause (f) of Section 2 of the Act of 2009. No person other than an allottee/ a settlee or a Raiyat can have an access to the remedy under the Act of 2009. Clause (i) of Sub-section (1) of Section 4 of the Act of 2009 which refers to "Construction of unauthorized structure" should also be read down to mean the construction of unauthorized structure on the land of a Raiyat allotted or settled under any of the above referred six enactments and no other land or structure. Clause (j) of Sub- section (1) of Section 4 of the Act of 2009 is clearly outside the purview of the any of the above referred six enactments. The principle of lis pendence transfer is necessarily applicable to a civil litigation. If at all, its reference in the Act of 2009 would necessarily mean the transfer of the land of a Raiyat or a settlee allotted or settled under any of the aforesaid six enactments pending the adjudication under the concerned Act. In our opinion, the power of the Competent Authority under the Act of 2009 cannot be read to be wide enough to enfold in its embrace all kinds of disputes relating to any land.

In my opinion, Sub-section (4) of Section 4 of the Act of 2009 brings a complete anachronism as it has the effect of encompassing in its folds any real or imaginary right an allottee or a settlee or a Raiyat can claim which is not conferred by any of the aforesaid six enactments. That would necessarily mean that the rights which are not conferred by or accrued under the above referred six enactments also can be adjudicated by the Competent Authority under the Act of 2009. This wide power conferred upon the Competent Authority is unbridled, unfettered and unguided. As we have seen on the facts of the present case that they are grossly abused. It is not possible to save the said Sub-section (4) of Section 4 of the Act of 2009 by employing the principle of harmonious interpretation. The said Sub-section (4) requires to be held to arbitrary and to that extent unconstitutional.

Sub-section (5) of Section 4 of the Act of 2009 empowers the Competent Authority to allow the parties to approach the Civil Court for adjudication of complex issues of title. Although the said Sub-section (5) is directory, should be read as mandatory. It shall be the duty of the Competent Authority to refer the complex issues of adjudication of title to the concerned Civil Court having jurisdiction to entertain and adjudicate such disputes.

For the aforesaid reasons, this Petition is allowed. Clauses (e), (g), (i) and (j) of Sub-section (1) of Section 4 of the Act of 2009 are read down to the extent indicated hereinabove. Sub- section (4) of Section 4 of the Act of 2009 is held to be arbitrary and ultra vires Article 14 of the Constitution and unconstitutional to that extent. The said Sub-section (4) of Section 4 is, therefore, quashed. Sub-section (5) of Section 4 of the Act of 2009 will be read as mandatory provision as indicated hereinabove.

The impugned order dated 27th December 2011 made by the Competent Authority-cum-Deputy Collector Land Reforms, Forbesganj in B.L.D.R. Act Case No. 91 of 2011-12 is quashed and set aside. Consequently, the appellate order made on 8th August 2012 made by the Divisional Commissioner,

Purnea in Land Dispute Appeal No. 69 of 2012 stands quashed. The B.L.D.R. Act Case No. 91 of 2011-12 filed before the Competent Authority-cum- Deputy Collector Land Reforms, Forbesganj is dismissed. The respondent no. 4 will bear the costs throughout.

It is clarified that this order shall not preclude the respondent no. 4, the plaintiff, from asserting her right to the disputed parcels of land before the Civil Court.

Interlocutory application stands disposed of.

(R.M. Doshit, CJ) As per Ashwani Kumar Singh, J I have had the privilege and advantage of perusing the judgment of Hon ble the Chief Justice. Since Hon ble the Chief Justice has extensively dealt with the facts and law involved in the matter, I need not repeat the same.

I fully concur with the view of Hon ble the Chief Justice with regard to Sub-sections (1) and (4) of Section 4 of The Bihar Land Disputes Resolution Act, 2009 (for short „the Act of 2009). The Hon ble Chief Justice has held that the Act of 2009 is an enactment for execution of the orders made under the six enactments referred to in the preamble and schedule-I of the Act of 2009. she has further held that but for Section 4 of the Act of 2009, the Competent Authority is not vested with the power of adjudication under any of the other provisions of the Act of 2009, and the Act which is designed to execute the orders made under the aforesaid six enactments, converts the Competent Authority into an adjudicating Court by dint of Section 4 of the Act of 2009. I am in complete agreement with the aforesaid view of Hon ble the Chief Justice. I also agree with the view that Sub-section (5) of Section 4 of the Act mandatorily requires the Competent Authority to allow the parties to approach the Civil Court for adjudication of complex issues of title.

However, I am unable to resist from adding some of my own observations in the context of the provisions of Sub-section (5) of Section 4 of the Act of 2009. Sub-section (5) of Section 4 of the Act of 2009 reads as follows :

"(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".

The group of words "complex question of adjudication of title" which form part of the sentence in Sub-

section (5) of Section 4 of the Act of 2009 has been used as a phrase in the said provision. While incorporating the aforesaid group of words as a phrase in Sub-section (5), the legislature itself says that all cases involving issues of title per se involve complex questions and which cannot be decided in a summary proceeding, being the ambit and scope of the Act of 2009, and thus under all circumstances where issues relating to title arise would have to be mandatorily closed by the Competent Authority.

In other words, the said phrase occurring in sub-section (5) of Section 4 of the Act of 2009 envisages that no sooner than a question of adjudication of title which is inherently a complex one is involved, the Competent Authority is required to invariably close the proceeding. The word „complex“ has not been used in contradistinction to the word „simple“.

In above view of the matter, I am of the considered opinion that Sub-section (5) of Section 4 of the Act of 2009 strictly forbids the Competent Authority to entertain matters involving questions of adjudication of title. I am of the view that the Competent Authority, irrespective of nature of cases involving issues of title, is bound to close the proceedings for want of jurisdiction and leave it open to the parties to seek remedies before the competent Civil Court.

In the result, subject to the aforesaid observations of mine, I fully agree with the findings and conclusions arrived at by Hon ble the Chief Justice in the matter.

(Ashwani Kumar Singh, J.) AFR Manish/Sanjeet