

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7525 of 1997

Chhatradhari Choudhary son of late Chhatu Choudhary of mohalla- Jagdishpur, p.S. Jamalpur, District- Munger.

.... Petitioner/s

Versus

- 1.The State of Bihar through District Collector, Munger, District- Munger.
2. The Divisional Commissioner, Munger.
3. District Collector-cum- District Magistrate, Munger.
4. Executive Special Officer, Jamalpur Municipality, Jamalapur, District- Munger.
5. Sita Ram Pasawan son of Muso Paswan of Mohalla- Jagdishpur, P.S. Jamalpur, district- Munger.
6. Saryug Choudhary son of Feku Choudhary of Mohalla Jagdishpur, P.S. Jamalpur, district- Munger.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi Mr. Ram Sevak Choudhary
For the State	:	Mr. Rajiv Kumar Singh
For Respondent no.4	:	Mr. Rakesh Kumar

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-02-2015

Heard learned counsel for the petitioner and the State.

In the present case the plot no. 14012 is said to be recorded in Municipal Survey Record, Munger as public land. As per the claim of the petitioner it is a passage, which is being used by general public but in Title Suit No. 104 of 1943, the private respondents have got a decree in his favour. A proceeding under Section 147 Cr.P.C. was initiated with respect to the passage and some orders were passed in favour of the public but on the face of decree that was passed by a competent court of jurisdiction, which cannot be nullified by the order passed by the Executive Magistrate exercising his power under Section 147 Cr.P.C. but the Collector directed for removal of encroachment recorded that the private respondent is trying to create obstruction in movement of the public but the Commissioner in his order dated 11.07.1997 passed in Munger Misc. Case

No. 3 of 1996-97 considered the judgment and decree passed in Title Suit vis-a-vis the order passed by the Executive Magistrate and arrived at a conclusion that the judgment and decree passed by the Executive Magistrate cannot be dwell upon the judgment and decreed passed by a competent court of jurisdiction and set aside the order of the Collector. This Court is of the same view as that of the Commissioner.

If the petitioner has a right of passage or right to utilize the passage he may approach before the Court of competent jurisdiction even individually or in representative capacity for declaration of public right.

With the aforesaid observation and direction, the writ petition stands disposed of.

(Shivaji Pandey, J)

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