

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5705 of 1991

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1. Rabindra Pd.Singh
 2. Yogendra Prasad Singh, both sons of late Mishree Singh, resident of village-Khoontadih Panchayat Secretary Barahiya district Munger

.... Petitioners

Versus

1. The State of Bihar
2. The Commissioner, Magardh Range, Gaya
3. The Collector, Nawada
4. The Additional Collector, Nawada
5. General Manager District Industry Centre, Nawada
6. Anchal Adhikari, Nawada
7. Land Reforms Deputy Collector, Nawada
8. Late Saudagar Yadav
9. S. P. Vigilance, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Anil Kumar Jha, Sr. Advocate
Mr. Gpla Bohra, Advocate
For the State : Mr. Anjani Kumar, AAG 6
Mr. S. Kumar, AC to AAG 6
For the Respondent 8 : Mr. Durgesh Nanda, Advocate
For the Nawada Bar Assn. Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 06-02-2015

Following are the reliefs prayed for in the present writ application:-

"(a) for issuance of writ, precisely in the nature of writ of certiorari, or any other appropriate writ(s), order(s), Direction(s) in order to quash the order dated 13.06.1991 passed by learned respondent No.2 whereby and whereunder the miscellaneous appeal no. 19/91 (preferred on behalf of the petitioners) has been rejected and it has been ordered that the State Government may proceed with the construction of approach road to be made by Industry Department. The Collector (respondent No.3) has been further directed to initiate a proceeding under section 4(h) of the

Bihar Land Reforms Act for cancellation of the demand register standing in the name of petitioners, as also the alleged settlement made in favour of the father of the petitioners.

(b) for issuance of further writ/ order/direction, to quash the ancillary order dated 26.02.1991 passed by the learned respondent No.4 (in Miscellaneous case No. 28/M/90) whereby the petition dated 05.03.90 and 16.07.90 filed on behalf of the petitioners, have been rejected in a most casual and illegal manner as will be apparent from the facts disclosed hereinafter.

(c) for issuance of a further direction commanding the respondents concerned to permanently refrain from interfering into the peaceful possession of the petitioners over the disputed lands, admittedly the title of which rests with them, and accordingly upheld the petitioner's possession over the same.

(d) pending the final disposal of this application the operation of the impugned order dated 13.06.91 may be stayed".

The petitioners' case is based on their claim that they have right title and interest over the property in question which they derived through a *Hukumnama* issued by the ex-landlord in favour of father of these petitioners Late Mishri Prasad Singh. Respondent No.8 has been impleaded as party, upon his intervention. He has disputed the title of the petitioners over the lands in question over plot No. 3139 Khata No. 608 situated in village Gonawan Kamalpur Barawa PS Nawada district Nawada. He has, on the other hand, claimed title over the said land on the basis of another *Hukumnama* issued by the ex-landlord.

Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the petitioners, has questioned the validity of the



order dated 13.06.1991 passed by the Commissioner, Magadh Division, Gaya in "Zila Nawada waad Sankhya 90-91". From the order of the Commissioner, Magadh Division, Gaya it appears that he came to a finding that the disputed land was reported to be "parti". He also came to a finding that the petitioners were not in possession over the disputed land.

The petitioners had earlier approached this court by filing CWJC No. No. 3355 of 1984 challenging the order of the Collector, Nawada whereby, he had held that in fact the State had title and possession over the land in question. The order of the Collector was set aside by this court by a judgement dated 08.07.1985 in following terms:-

"6. I, therefore, set aside Annexure-1 and direct the Collector to examine the documents filed by the parties and the entry in the Khatian before embarking upon appropriating lands of others in the name of Harijan Welfare Hospital. The object may be laudable but the Government should find its own land for the purpose or voluntary donors, who may be good enough to support the cause, but it cannot be prudent on the part of the State to usurp other people's properties without deciding the matter thoroughly and properly in proper proceeding. As things stand, I feel that the only remedy for the State would be to either proceed under the Land Acquisition Act or the Land Encroachment Act or section 4(h) of the Land Reforms Act. The latter two steps as things may stand may not be very easy, but I leave it to the judicial conscience of the Collector".

Apparently, this court, while finally disposing of the said CWJC No. No. 3355 of 1984, held that only remedy with

the State would be either to proceed under the Land Acquisition Act or the Land Encroachment Act or section 4(h) of the Land Reforms Act.

The Commissioner, by the impugned order, giving due regard to the observations made by this court in the judgement dated 08.07.1985(supra), disposed of the petitioners' appeal in following terms:-

"So far as the alleged settlement of the land with the petitioner's father and the demand running in the names of the petitioners in the State Serista are concerned, the Collector, Nawada should initiate a proceeding for the cancellation of the alleged settlement under section 4(h) of the Bihar Land Reforms Act and for cancellation of demand running in the name of the petitioners separately.

In the result of the present appeal is dismissed".

Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the petitioners, has vehemently contended that once the Jamabandi has been created in favour of the petitioners, it cannot be cancelled. He has placed reliance upon various judgements of this court.

I need not go into such submission and factual details in the present writ proceeding, which has acquired substantial volume during its pendency. The Commissioner has merely asked the Collector, Nawada to initiate proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as the Act). The petitioners shall have enough opportunity to



put forward their case in the said proceeding under section 4(h) of the Act. The order of the Commissioner, Magadh Division, Gaya does not require any interference in a proceeding under Article 226 of the Constitution of India. As has been noted above, the petitioners and respondents have claimed title over the disputed land on the basis of their respective documents brought on record by them and have disputed each others title over the said land. This court cannot, in the facts and circumstances of the case, go into such disputes and adjudicate upon respective claims of the parties of title over the disputed land.

There is certain dispute over possession over the disputed land. From the impugned order of the Commissioner, I find that the Commissioner has recorded that he had himself visited the spot and found the disputed plot along with other plots being used by the departments of the State Government. He has recorded that there was no need for initiating proceeding under Land Encroachment Act as there was no encroachment over the disputed land. No malafide has been alleged against the Commissioner, who has recorded in the order that he had himself visited the spot and found that it was not in possession of any private person.

Keeping in view the nature of the controversy among the parties, I direct that no person shall attempt to secure

possession over the disputed land till the conclusion of the proceeding under section 4(h) of the Act, as directed by the Commissioner, Magadh Division, Gaya. Till then the Commissioner, Magadh Division, Gaya will be *custodia legis* of the disputed land and will ensure safety of the said property. Any violation of order of this court, as regards possession over the disputed land, will be viewed seriously by this court.

This writ application is disposed of with the observations, as aforesaid.

(Chakradhari Sharan Singh, J)

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