

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1573 of 1997

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1. Jagannath Singh son of Late Brahmdeo Singh
 2. Chandeshwar Singh so of Late Yamuna Singh
 3. Ratneshwar Singh son of late Ramavatar Singh
 4. Ram Naresh Singh son of late Ramavatar Singh

All residents of village-Bishanpur, Dhodhani, Tole Mushari, PS and PO-Parsauni, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Sitamarhi.
3. The Circle Officer, Riga, District-Sitamarhi
4. Bhabhikhan Mandal son of Madan Mandal
5. Soman Mandal son of Madan Mandal
6. Dasarath Mandal son of Madan Mandal
7. Anurag Mandal son of Madan Mandal
8. Nirgun Mandal son of Madan Mandal
9. Madan Mandal son of late Satahu Mandal

Respondent Nos. 4 to 9 are residents of village- Bishanpur, Deodhani, Tole Mushari, PS and PO-Parsuni, Anchal-Riga, Sub Division and Munsifi Sitamarhi-Sadar, District-Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-02-2015

No one appears either on behalf of the petitioners or from the side of the respondents.

This application has been filed for issuance of direction restraining Respondent No. 3 for construction of the house under the 'Indira Aawas Yojana' or any construction on the plot of land situated in Anchal-Parsauni within the district of Sitamarhi with respect to plot Nos. 264, 265 and 266, (new Khata No. 104).

Short fact of this case is that the land in question measuring 2 decimals appertaining to Khesra No. 264, new Khata No. 105, Area 5 decimals appertaining new Khesra No. 105, new Khata No. 104, Area 8 decimals appertaining to new Khesra No. 265 and new Khata No. 104 claiming to be ancestral property of the petitioners.

Claim has been made in the present application that in rainy season of Bhadon, 1992, Madan Mandal was facing hardship of residence on account of collapse of his thatched house and requested the petitioners to allow him to reside in their house for about three months that upto Kartik, 1992.

The petitioners taking into consideration the said plight Madan Mandal happens to be sons-in-law of their village allowed him to reside in their house situated over the land in question.

After lapse of 3 months, petitioners asked Madan Mandal to vacate their house. When he refused to oblige the petitioners to vacate the same, they filed Title Suit No. 71 of 1993 with a prayer for vacating the said house and restoration of possession in their favour in respect of 3 decimals of land and house situated in 2 decimals of land impleading Madan Mandal as party to the suit, he appeared and entered into compromise, accordingly, compromise decree was passed on 13th August 1993, at the same time, while the

matter was pending, Madan Mandal moved before the Circle Officer, Riga for issuance of 'Basgit Parcha' in his favour in respect of 5 decimals of land.

After disposal of Title Suit No. 71 of 1993 vide Compromise Decree dated 13th August 1993, Madan Mandal filed a petition before the Circle Officer, Riga on 22nd November 1993 for withdrawal of the 'Basgit Parcha' where he has accepted that the house including the land in question belongs to the petitioners, he also produced the compromise decree before the Circle Officer, on the basis of compromise decree, Madan Mandal sought permission to withdraw the case and accordingly, the same was disposed of vide order dated 22nd December 1993 (Annexure-3) and the Circle Officer withdrew the 'Basgit Parcha'. When Madan Mandal did not vacate the house and the land, petitioners were compelled to file Execution Case No. 6 of 1994 for executing the compromise decree passed in T.S. No. 71 of 1993.

The son of Madan Mandal filed a title suit thereby sought the relief for setting aside the compromise decree passed in T.S. No. 71 of 1993.

An application was also filed for stay of Execution Case no. 6 of 1994. The Munsif, vide order dated 4th April 1995, stayed the proceeding of Execution Case No. 6 of 1994 till the

disposal of Title Suit No. 118 of 1994. Against the said order, petitioners preferred an appeal before the District Judge, Sitamarhi vide Miscellaneous Appeal No. 4 of 1995, according to the petitioners, which is still pending before him.

It appears that sons of Madan Mandal, namely, Bhabhikhan Mandal, Soman Mandal, Dasarath Mandal, Anurag Mandal and Nirgun Mandal filed a separate petition before Circle Officer, Riga under the Bihar Privileges Homestead Tenancy Act for issuance of 'Basgit Parcha' which was registered as Case No. 8 of 1993-94 and vide order dated 29th April 1994, direction was issued to issue the Parcha in their favour. Against that order, petitioners filed a revision application before the Collector, Sitamarhi vide Revision Case No. 36 of 1994 which is still pending.

As per the claim of the petitioners, during pendency of the proceeding before the Revisional Court, the Circle Officer and the Block Development Officer in pursuance of the direction of the Collector, Sitamarhi intended to construct the house over the disputed land under the 'Indira Aawas Yojana'. When the petitioners could know about this fact, they filed a representation dated 14th October 1996 through registered cover.

That petitioners filed injunction petition in T.S. No. 118 of 1994 for granting injunction, restraining the Respondent to

construct the house over the land in question but the same was rejected on 22nd January 1997.

In the present case, petitioners have claimed that the respondent should be restrained from construction over the disputed land.

The Court while issuing notice has stayed the construction over the disputed plot and if any construction over the land is question is going on that plot should be stayed.

As the parties have lost their interest and are not appearing before this Court to press this application, there will not be any construction over the plot in question during pendency of Title Suit No. 118 of 1994.

In such view of the matter, this petition is disposed of with the aforesaid observation and direction.

(Shivaji Pandey, J)

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