

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15320 of 2010

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Ambika Kumar Gupta, Son of Sri Laxaman Prasad, resident of Village-Badheja,
P.S.- Muffasil, District-Gaya, at present residing at Mohall- Koeri Bari, P.S.- Civil
Lines, District-Gaya.

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Gaya
3. Md. Jalil Mian, son of Late Md. Alijan, resident of Village- Nauranga, P.S.-
Muffasil, District-Gaya
4. Survey Superintendent, Municipal Survey, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Sinha, Advocate

For the Respondent/s : Mr. Anjani Kumar, AAG-6

Mr. AC to AAG-6

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

C.A.V. JUDGMENT

Date: 16-01-2015

In the instant application, the petitioner seeks
quashing of the order dated 20.07.2010, passed by Survey
Superintendent in Survey Appeal No. 2221 of 2010 under Section 15
(1) of the Bihar and Orissa Municipal Survey Act, 1972.

The case of the petitioner is that the land in dispute is
recorded as Giar Mazarua Malik land in the Cadastral Survey Records
of Rights of the then Ex-landlord Smt. Rani Bhuvneshwari Kuer @
Bachha Sahib of Tekari Raj. She settled 26 decimals of land of plot
no. 105, 56 decimals of land of plot no. 135 and 52 decimals of land
of plot no. 552 of Khata no. 144 through Hukumnama in favour of
Sita Sao son of Sewak Ram on 17.12.1942. Thereafter Sita Sao came



in peaceful possession of the same, as an absolute owner. He got his name mutated in the Jamindari Srista and paid Jamindari tax and got tax receipts. At the time of vesting of Jamindari, said Sita Sao also filed a compensation case bearing Compensation Case No. 01 of 53-54, in which he was awarded compensation. Sita Sao died leaving his only one son, namely, Laxman Prasad and this petitioner is sole legal heir and successor.

The grievance of the petitioner is that in Revisional Survey Record, the land has wrongly been prepared as Anabad Serv Sadharan with illegal possession of Jalil Mian, son of Md. Alijan. The petitioner filed objection under Section 9 of the Bihar and Orissa Municipal Survey Act before the Survey Superintendent, Gaya giving rise to Objection Case No. 1731 of 2003, who allowed his objection case on 11.11.2004 setting aside the entry "Anabad Serv Sadharan" in the record of right as well as entry with respect to illegal possession of Jalil Mian, son of Md. Alijan. On 11.02.2010, almost after six years, Md. Jalil Mian filed an appeal before the Survey Superintendent under Section 15 (1) of the Bihar and Orissa Municipal Survey Act with a petition under Section 5 of the Limitation Act giving rise to Appeal No. 221 of 2010. The petitioner was issued notice. The petitioner appeared and contested the appeal and filed Hukumnama, Zamindari receipts, Jamindari returns and the order passed in Objection Case No.

1731 of 2003.

The case of the petitioner is that in course of hearing of Objection Case No. 1731 of 2003, Survey Amin was appointed, who visited the spot and found his physical possession on the land. However, during course of hearing of appeal, which was filed belatedly after six years, the Survey Amin this time found the appellant in possession.

The petitioner submits that the limitation was condoned and though there was no ground for condoning the same. He further asserts that he is in possession of the land and disputed the report of subsequent Amin.

Respondent no.3 has appeared and filed counter affidavit. He has denied the claim of the petitioner that the Ex-landlord had settled the piece of land through Hukumnama on 17.12.1942 firstly in favour of Sita Sao. He submits that the Ex-landlord settled an area of 13 Katha 10 dhurs in C.S. plot no. 552, C.S.K hata no. 145 in the name of Laxminia Devi @ Laxmi Nisha Khatoon, wife of Nathan Mian. Laxmi Nisha Khatoon died leaving her son Md. Alijan. He submits that an Objection Case No. 1652 of 1998 under Section 9 of the Act was filed in which the possession of Md. Alijan was found. He further submits that an order was passed on 28.09.2001 under Section 9 of the Bihar & Orissa Municipal Act,

1920, in which the description of the land was mentioned as Sarva Sadharan and the land was found in possession of respondent no.3.

I find that both sides are claiming possession on the land pursuant to settlement made by the Ex-landlord. In such circumstances, both the orders are set aside and the matter is remitted to the Assistant Superintendent of Municipal Survey, Gaya for fresh consideration. It will be open for the Assistant Superintendent of Municipal Survey, Gaya to conduct an on spot enquiry in presence of both the parties to ascertain as to which the parties is in possession of the land. At the same time, it would be open to both the parties to settle their grievances in the competent Civil Court, without prejudice to the entry made in the revisional survey khatiyān.

The writ application is accordingly disposed of.

(Samarendra Pratap Singh, J.)

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