

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2647 of 2011

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1. Raguni Mahto S/O Late Bulkan Mahto R/O Malahipakri, P.S. - Patrakar
Nagar, Kankarbag, Town And District - Patna

.... Petitioner/s

Versus

1. The Managing Director, Bihar State Housing Board, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Laxmi Narayan Das

For the Respondent/s : Mr. Ram Shankar Pradhan

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

4 23-11-2015 Heard Mr. Das, Advocate for the petitioner and Mr.

R.S. Pradhan, Sr. Advocate for the Bihar State Housing Board,

Patna (for short 'the Housing Board').

The plaintiff filed the suit for declaration of his right,

title and interest in plot no. 85. The Housing Board as well as the

other defendants contested the suit. The claim of the Housing

Board is that the said land was acquired by the State and handed

over to the Housing Board for allotment to the eligible claimant.

The evidence of the plaintiff-petitioner was closed in the year

2008. The Housing Board produced two witnesses who were

examined and discharged on 22.12.2008. About 02 years

thereafter two documents were produced from the custody of the

Housing Board for being exhibited in the case. The Trial Court,



considering the nature of the documents allowed them to be exhibited. An application thereafter was filed by the plaintiff on 12.7.2010 for recall of the two witnesses for further cross-examination in the light of those two documents which was subsequently presented and accepted as exhibits. The same was objected by the Housing Board by filing rejoinder. On a consideration of the submission of the parties the trial Court under the impugned order dated 22.9.2010 passed in Title suit no. 433 of 1999 rejected the same.

Mr. Das drawing attention of the Court to the operative part of the order has submitted that no plausible reason has been assigned by the trial Court for rejecting the said prayer of the plaintiff-petitioner. To ensure fair trial, the parties against whom the documents have been filed and exhibited should be granted an opportunity to cross examine those two witnesses in relation to those documents particularly when those documents were not filed along with the written statement as per the provision of the Code of Civil Procedure.

Mr. Pradhan opposed the prayer and submitted that the suit is pending since 1999. The plaintiff-petitioner could have raised the objection when the documents were being exhibited. The Court finding them the public documents produced from the

custody of the Housing Board allowed their exhibition in the case.

The law requires the party to produce documents on which they seek to rely along with plaint or the written statement as the case may be. Indisputably, these two documents were not filed by the defendant-Housing Board along with the written statement. The two witnesses were produced. They were examined in chief, cross examined and were discharged. Nearly two years thereafter two documents were produced by the defendant Housing Board which have been allowed by the Court to be placed on record as exhibits. In fairness to the plaintiff-petitioner, the Court ought to have allowed at least one opportunity to the plaintiff-petitioner to further cross examine those two witnesses on recall.

Taking into account the aforesaid facts, this Court directs that on fresh application filed by the petitioner within three weeks from today, the Trial Court shall fix a date for appearance of those two witnesses who have been cited by the petitioner as DW-1 and DW-2. Once they appear the plaintiff-petitioner will utilize the opportunity for their cross examination confined to those two documents. If the petitioner fails to utilize the said opportunity, no further opportunity shall be granted by the trial Court for their cross examination. Neither the parties before this

Court has stated nor this Court is aware whether those two witnesses (DWs 1 and 2) continue in employment of the Housing Board. If they are not in the employment of the State Government/Housing Board the petitioner-plaintiff shall deposit appropriate fee for their appearance for cross examination as quantified and directed by the learned Trial Court.

(Kishore Kumar Mandal, J)

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