

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3186 of 2014

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1. Sanjay Kumar Singh, son of Late Hari Narayan Singh.
 2. Ram Mohan Singh @ Mohan Singh, son of Late Deni Singh.
- Both are residents of Village- Pasai, P.S. Belon District - Kaimur at Bhabhua.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate/Collector, Kaimur at Bhabhua.
3. The Additional Collector Kaimur at Bhabhua.
4. The Sub Divisional Officer, Bhabhua.
5. The Anchaladhikari, Rampur, District Kaimur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arabind Nath Pandey

For the Respondent/s : Mr. Yashraj Vardhan, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-01-2015

Heard Mr. Arabind Nath Pandey, learned counsel appearing on behalf of the petitioners and Mr. Yashraj Vardhan, learned Assisting Counsel to Standing Counsel No.20 for the State.

Re: I.A. No.7089 of 2014:

Although an interlocutory application bearing I.A. No.7089 of 2014 has been filed by one Ram Pravesh Ram seeking to intervene in the matter but on call, there is no counsel to press the said interlocutory application which is dismissed accordingly.

Re: CWJC No.3186 of 2014 :

With

I.A. No.5016 of 2014

With

I.A. No.5584 of 2014

The petitioners have prayed for issuance of a writ in the



nature of certiorari for quashing the notice dated 17.1.2014 issued by the Circle Officer, Rampur, District- Kaimur requiring the petitioners to remove the rice mill situated over the plots bearing khata no.175, plot nos.577 and 578, *inter alia*, on grounds that it is a Government *Sairat* land. The notice also bears stipulation that upon failure on the part of the petitioners to do so within three days, the same would be seized. Copy of the notice is placed at Annexure-3. The notice dated 17.1.2014 was followed by another notice bearing Memo no.401 dated 4.6.2014 and a notice dated 23.7.2014 which have been placed on record vide Annexure-5 to I.A. No.5016 of 2014 and Annexure-6 to I.A. No.5584 of 2014. A prayer has also been made seeking leave to question the said notice and considering that these notices are merely consequential in nature, the petitioners are permitted to question the same in the present proceedings.

The plots which are subject matter of the present proceedings as reflecting from the notices aforementioned are as follows:

<u>Survey Plot No.</u>	<u>Chak Plot</u>	<u>Area/Dec/Acres</u>
743	579	2.47
928	577	10.87
927	578	0.96
926	645	0.44
925	576	1.29
732	537	--
731	532	0.33

411

150

4.72

Whereas the notice impugned in the writ petition at Annexure-3 to the writ petition refers to the chak plot numbers, the subsequent notice placed at Annexures-5 and 6 to the interlocutory applications clarify the survey plots with the chak plot numbers.

Mr. Arabind Nath Pandey, learned counsel appearing on behalf of the petitioners has submitted that although the notice placed at Annexures-5 and 6 refers to a number of plots but the petitioners do not claim any right, title or interest over survey plot no.731 bearing chak plot no.532 admeasuring 0.33 acres and survey plot no.411 bearing chak plot no.150 admeasuring 4.72 acres. He submits that rest of the plots mentioned in the notices were subject-matter of suit and which has been decided in favour of the petitioners and the title of the two petitioners stands confirmed under the judgment and decree of the civil court.

The limited relief thus prayed in this writ petition is that the Circle Officer, Rampur, district Kaimur at Bhabhua should abide by the judgment and decree passed in Title Suit No.142 of 1992 and Title Suit No.152 of 1992, whereby the title of the petitioners over the plots in question stands confirmed and by a decree of permanent injunction the respondents have been restrained from interfering with the peaceful possession of the petitioners over the said plots.



It is not in dispute that the State of Bihar through the Collector as well as the Circle Officer were defendants in the suit. It is also not in dispute that the State preferred Title Appeal No.46 of 1997 and Title Appeal No.47 of 1997 against the judgment and decree passed in the title suits but both the title appeals were dismissed for non-prosecution.

A counter affidavit has been filed on behalf of the State and in paragraphs 7 and 8 thereof it has been fairly stated that whereas Title Appeal No.46 of 1997 was dismissed in default on 20.9.2013, Title Appeal No.47 of 1997 was dismissed in default on 10.08.1998.

It is the contention of learned counsel appearing on behalf of the State that a Miscellaneous Case No.13 of 2013/401 of 2014 has been filed on 21.1.2013 for restoration of Title Appeal No.46 of 1997 and Miscellaneous Case No.27 of 2014/487 of 2014 has been filed on 7.8.2014 for restoration of Title Appeal No.47 of 1997 and both the restoration applications are pending for consideration.

The limited issue that arises for consideration by this Court is that in view of the indisputable position where by a judgment and decree of the Civil Court the title of the petitioners over the plots in question stands confirmed, whether the Circle Officer has acted within his jurisdiction to issue the notices. In the

opinion of this Court, the Circle Officer in issuing the notice impugned is clearly violating the decree passed by the civil court in the suits in question as also the permanent injunction issued thereunder. A mere pendency of the restoration applications would vest no right in the Circle Officer to issue the notice in question until such time that the decree remain in operation and confirms the title of the petitioners over the plots in question.

For the reasons aforementioned the notice dated 17.1.2014 placed at Annexure-3, the notice bearing Memo no.401 dated 4.6.2014 placed at Annexure-5 and the notice dated 23.7.2014 placed at Annexure-6 cannot be upheld and are accordingly set aside.

The writ petition is allowed. The interlocutory applications bearing I.A. No.5016 of 2014 and I.A. No.5584 of 2014 are accordingly disposed of.

(Jyoti Saran, J)

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