

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.88 of 2015

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1. BARRISTER KHAN
2. MOHAMMAD RIZWAN @ KALLACTOR KHAN, BOTH ARE SONS OF LATE MOHAMMAD MASUK ALI KHAN, BOTH ARE RESIDENT OF MOHALLA SAI TAKIA I.B.H COLONEY, P.S.-ALAMGANJ, DISTRICT-PATNA, PRESENTLY RESIDENT OF MOHALLA-GULZARBAGH, DADAR MANDI, P.S.-ALAMGANJ, DISTRICT-PATNA-7.

.... APPELLANT/S

VERSUS

1. THE STATE OF BIHAR THROUGH COLLECTOR, PATNA.
2. COLLECTOR, PATNA.
3. ADDL. COLLECTOR, PATNA.
4. DEPUTY COLLECTOR, LAND REFORMS PATNA CITY.
5. THE CIRCLE OFFICER, SADAR, PATNA.
6. THE DISTRICT LAND ACQUISITION OFFICER, SADAR, PATNA.
7. THE SUPERINTENDENT NALANDA MEDICAL COLLEGE AND HOSPITAL, AGAM KUAN, PATNA.
8. HEALTH COMMISSIONER, BIHAR, PATNA.
9. ASSISTANT, SUPERINTENDENT NALANDA MEDICAL COLLEGE AND HOSPITAL, AGAM KUAN, PATNA.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. K.N. Choubey, Sr. Adv.
Mr. Ashok Kumar Garg, Adv.
Mr. Dineshwar Pandey, Adv.
Mr. Yogendra Kumar Dwivedy, Adv.
For the Respondent/s : Mr. Kundan Bahadur Singh, SC-22.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 22-09-2015 Heard learned counsel for the appellants as well as SC-22, Kundan Bahadur Singh.

On account of refusal of prayer having raised on behalf of appellants vide order dated 11.02.2015 whereby and whereunder the petition purported to be under Order XXXIX of the CPC has been turned down by the learned lower court, been given a cause to re-agitate the matter by filing instant appeal in terms of Order XLIII of the CPC.



During course of argument, the learned counsel for the appellants made elaborate submission over prima facie case and further, deficiency so persisting, according to his own perception, during course of acquisition at the end of State and further, to justify the same, took shelter under amended Land Acquisition Act more particularly, Section 24. Furthermore, it has also been pleaded that the Survey Plot No.1463 was never subject to acquisition and is found fortified from own conduct of State which, the appellant gathered by way of information tendered by the State under Right to Information Act as well as by the letter communicated to District Registrar whereunder details of plot numbers have been given which was not to be taken up for registration. Furthermore, it has been pleaded that Survey Plot No.1463 happens to be his ancestral property, hence learned lower court was wrong in overthrowing the prayer of appellant for grant of ad-interim injunction, as the state was bent upon to remove the appellant from the plot no.1463.

The learned SC-22 controverted the same and submitted that aforesaid plea have not taken before the learned lower court. Moreover, the issue needs extraordinary attention over the relevant documents so that the actual status of Survey Plot No.1463 be traced out and during course of consideration of instant appeal for the purpose of prima facie case, will certainly influence the judicial mind of the learned lower court because of the fact that suit is to be decided on the basis of the documents having been exhibited in legal way as well as nature of evidence having adduced on behalf of respective parties while for adjudicating upon the theme of ad-interim

injunction, no such eventualities are to be followed apart from the fact that appellant status has been found as an encraocher. Therefore, if the party is so interested and further willing to cooperate, let the learned lower court be directed to expedite the trial and concluded the same within shortest span of time without granting any kind of undue adjournment. The learned counsel for the appellants fully assured in having active cooperation at their end.

That being so, the learned lower court is directed to expedite the trial and will conclude the same within four months on day-to-day basis without granting undue adjournments. It is expected, as assured at the end of respective parties, to have their active cooperation in getting the trial disposed of within the aforesaid stipulated period. Till then, status quo is directed to be carried out. In case, the trial is not concluded within aforesaid period, then, in that event, the grant of status quo will automatically evaporate.

With the aforesaid observation, instant appeal is disposed of at the admission stage itself.

The office is directed to serve a copy of the order upon the District Judge, Patna for keeping surveillance over the trial as well as to the learned lower court for its compliance.

(Aditya Kumar Trivedi, J.)

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