

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3953 of 2014

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1. Manoj Paswan Son of Late Mahendra Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 2. Heera Paswan Son of Gyan Chandra Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 3. Pappu Kumar Paswan Son of Mahendra Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 4. Jagdish Paswan Son of Late Mohit Paswan Resident of Village- Gayghat, Police Station- Gayghat, District- Muzaffarpur
 5. Savitri Devi Wife of Dilip Paswan Resident of Village- Bahadurpur Bathwara, Police Station- Gayghat, District- Muzaffarpur
 6. Sonawati Devi Wife of Triveni Paswan, Resident of Village- Dekuli, Police Station- Laheriyasari, District- Darbhanga
 7. Neelam Devi Wife of Shiv Shankar Jha Resident of Village- Jahangirpur, Police Station- Gayghat, District- Muzaffarpur
 8. Heera Paswan Son of Gyanchandra Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 9. Mahindar Paswan Son of Parmeshwar Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 10. Renu Devi Wife of Sanjeev Paswan, Resident of Village- Bahadurpur Bathwara, Police Station- Gayghat, District- Muzaffarpur
 11. Sila Devi Wife of Mohan Paswan Resident of Village- Chakka, Police Station- Darbhanga Sadar, District- Darbhanga
 12. Bhogendra Paswan Son of Late Prabhu Paswan, Resident of Village- Bahadurpur Bathwara, Police Station- Gayghat, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Science and Technology, Government of Bihar, Patna
2. The Collector-Cum-District Magistrate, Darbhanga
3. The Sub-Divisional Magistrate, Darbhanga Sadar, Darbhanga
4. The Circle Officer, Darbhanga Sadar, Darbhanga
5. Darbhanga Collage of Engineering, Darbhanga, through the Principal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Rai, Adv.
For the Respondent/s : Mr. Amar Nath Deo S.C. 26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 24-04-2015 Heard Mr. Bindhyachal Rai, learned counsel for the
petitioners and learned counsel for the State.

The grievance of the petitioner is that the State authorities in the District of Darbhanga are trying to override and by pass the legal recourse.

The petitioners herein are holders of plots the description of which finds mention in paragraphs 5 to 7 of the writ petition and runs as follows:

“5. That the father of the petitioner No.1 namely Mahendra Paswan who is also petitioner No.9 purchased the land of C.S. Plot No.66 and 67 (R.S. Plot No.42) comprised in C.S.Khata No. 49 and 59 vide registered sale deed dated 10/9/2007 and is in peaceful possession of the said piece of land since the execution of the sale deed.

6. That the petitioner No.1 and 9 have also executed an agreement for sale with the aforesaid vendors namely, Dinanath Purve and Arun Kumar Purve with regard to the land of C.S.Plot No.38, 39, 40, 41, 42 and 43.

7. That the **petitioner No.2** also purchased the land of Khata No. 57, Khesra No. 255(new), Khata No. 96, Khesra No. 186(old), Khata No. 104, Khesra No. 185 (old) measuring 3 Kathas through registered sale deed No. 2714, dt. 25/2/2013, **petitioner No. 3,4,11 and 12** purchased the land of Khata No. 96, Khesra No. 192(old) measuring area 6 Kathas through registered sale deed no. 16658, dt. 6/10/2012, **petitioner No.5** purchased the land of Khata No. 57, Khesra No. 255(New), Khata No. 96, Khesra No. 186(new), Khata No. 104 Khesra no. 185(old) measuring area 1 katha through registered sale deed No. 3418, dt. 7/3/2013, **petitioner No.6** purchased the land of Khata No. 57 Khesra No. 255(New), Khata No. 96 Khesra No. 198(Old), Khata No. 104 Khesra No. 185(Old) measuring Area 2 Katha through registered sale deed no. 2715, dt. 135/2/2013, **petitioner No.7** purchased the land of Khata No. 57 Khesara No. 255(New), Khata No. 96 Khesara No. 186(Old), Khata No. 104 Khesra No. 185(old) measuring area 2 Katha through registered sale deed no. 3417, dt. 7/3/2013, **petitioner No.8** purchased a piece of land of Khata No. 29, Khesara No. 144(old), Khata No. 2, Khesara No. 153, Khata No. 90, Khesara No. 100 new measuring area 1 bigha 10 katha, through registered sale deed No.

17273, dt. 20/12/2006, **petitioner No.10** purchased a piece of land of Khata No. 96, Khesra No. 186 Old, Khata No. 104 Khesra No. 185 old measuring area 3 Katha through registered sale deed No. 2717, dt. 25/2/2013 from the aforesaid vendors namely Dinanath Purve and Arun Purve.”

The petitioners are purchasers of land through registered sale deeds. It is the case of the petitioners that an encroachment proceeding was initiated under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as ‘the Act’) bearing Encroachment Case No. 1 of 2009-10 and when the Circle Officer as a Collector under ‘the Act’ held the land not to be a public land and thus dropped the proceedings while observing that the issue of title can only be addressed before an appropriate Court. The order of the Circle Officer dated 26.7.2010 is placed at Annexure-4 to the writ petition.

It is the case of the petitioners that a statutory appeal was filed against the order of the Circle Officer giving rise to Encroachment Appeal No. 9 of 2013, however, its status is not known to the petitioners. It is the contention of the petitioner that the State along with the College in question i.e. respondent No.5 have also filed Title Suit No. 246 of 2013 in the Court of Subordinate Judge, Darbhanga praying inter alia for declaration of their right, title and interest over the schedule land as also for a declaration that the acquisition of title by the defendants who are

the petitioners before this Court, is without sanction of law. A prayer has also been made to declare the sale deeds as null and void. The details of plots are mention in the Schedule and it is the contention of the petitioners that the plots held by them finds mention in the schedule.

Mr. Bindhyachal Rai, learned counsel for the petitioners further submits that despite the position where the State has taken recourse to a civil law remedy for adjudication of the matter, they have also filed a complaint case bearing Complaint Case No. 1044 of 2013 which is pending consideration in the Court of Chief Judicial Magistrate, Darbhanga.

The grievance of the petitioners is that the district administration not being satisfied with the above noted litigations to which the petitioners have been subjected have now tried to bypass these remedy by issuing directions for supply of appropriate force for demarcation of the land which is the subject matter of the suit.

Learned counsel in support of his submission has referred to an order issued by the Sub Divisional Magistrate, Darbhanga Sadar dated 11.1.2014, a copy of which is placed at Annexure-5 whereby a request has been made to the Senior Superintendent of Police to provide force to carry out demarcation.

The limited grievance of the petitioners is that once the district administration has taken recourse to the civil law remedy by filing a Title Suit No. 426 of 2013, no action can be taken by them in respect of plots which are subject matter of the suit and which are held by the petitioners without taking leave of the trial court.

Counter affidavits have been filed by the respondents. It is the stand of the Principal Secretary that the College in question was taken over by the State of Bihar under the Bihar Private Engineering College Taking Over Act of 1991 (hereinafter referred to as 'the Taking Over Act') and that the petitioners have purchased lands which in fact belongs to the College. The Principal Secretary however has conveniently not bothered to make any comment regarding the pending Title Suit No. 246 of 2013 before the court below.

The affidavit filed by the Principal Secretary is shoddy and does not respond to the issue raised by the petitioners. A second counter affidavit has been filed by the respondent Nos. 2 to 4 i.e. the District Magistrate, Darbhanga, Sub Divisional Magistrate, Darbhanga who is the author of the directions placed at Annexure-5 and the Circle Officer, Darbhanga Sadar who has drawn encroachment proceedings while relying upon 'the Take



Over Act'. It is admitted by the authorities that they have taken recourse to Title Suit No. 246 of 2013. Surprisingly even when the respondents also referred to an order of the Division Bench in the intra court appeal filed by the State bearing L.P.A. No. 1989 of 2011 questioning an order passed in C.W.J.C. No. 16733 of 2008 which was dismissed while affording liberty to the Government to challenge the sale deeds before a Civil Court, no comments have been offered by them on the complaint of the petitioner made in para 20 of the writ petition complaining of the action by the Sub Divisional Magistrate even when the matter is pending consideration before the Civil Court.

I have heard learned counsel for the parties and I have perused the records.

In view of the order of this Court in L.P.A. No. 1939 of 2011 and taking into consideration that the respondent State in obedience thereof through the Collector of the District has filed a Title Suit No. 246 of 2013 in respect of the lands in question and which is pending consideration before the Subordinate Judge, Darbhanga, any action by the district authorities while the matter is pending consideration before the trial court would be bypassing the judicial remedy and would amount to interference with the judicial process.

While affording liberty to the petitioner to set out his complaint before the trial court in the pending suit, this Court will not uphold the directions issued by the Sub Divisional Magistrate, Darbhanga as contained in his order dated 11.1.2014 impugned at Annexure-5 for it is a blatant interference with the adjudication of the matter pending consideration before the Subordinate Judge, Darbhanga.

Once the issue is pending consideration before the Subordinate Judge, Darbhanga in Title Suit No. 246 of 2013 any proposed action by the district authorities in relation to the plots which are subject matter of the suit can only be done upon leave of the trial court in Title Suit No. 246 of 2013. The order dated 11.1.2014 of the Sub Divisional Magistrate, Darbhanga being totally illegal cannot be upheld and is set aside.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

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