

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2051 of 2014

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1. Sri Kamta Sakhi Math and Mahabir Asthan at Mahabir Asthan, Main Road, East Gandhi Maidan, Patna, District- Patna through Ravi Prakash Verma-Sevait.
 2. Ravi Prakash Verma, S/o Late Mahanth Awadh Prasad Verma @ Mahanth Awadh Bihari Verma, R/o Mahabir Asthan, Main Road, East Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Patna.
2. The Collector, Patna, District- Patna.
3. The D.C.L.R. Patna.
4. The Circle Officer, Sadar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dwvedi, Sr. Adv. with
Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr. Anjani Kumar, AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 19-02-2015

The petitioners have prayed for the following reliefs:

- (i) For issuance of writ in the nature of certiorari for quashing the order dated 15.1.2014 passed by Collector, Patna in Land Encroachment Appeal No.3 of 1998-99 by which he has allowed the Encroachment Appeal as filed by the Circle Officer, Patna Sadar.
- (ii) For issuance of writ in the nature of certiorari for quashing the notice dated 20.1.2014 issued under the signature of Circle Officer, Sadar Patna (Respondent no.4) by which he has directed the petitioner to remove

the alleged encroachment from the disputed land within twenty four hours.

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- (iii) Respondent no.4 may be commanded to remove its illegal construction made on the lands of petitioner as described in paragraph no.4 of this petition without any further delay and not to make any further encroachment over any part of the land.
 - (iv) For issuance of writ in the nature of mandamus commanding the official respondents to not disturb the peaceful possession of the petitioners till final disposal of the instant writ application.
 - (v) For any other writ/writs, order/orders for which petitioner deemed entitled too.

Mr. Shashi Shekhar Dwivedi, learned senior counsel standing for the petitioners has submitted that whereas the petitioner no.1 is a Math of “Sakhi Sampraday”, the petitioner no.2 is its Mahanth. He submits that the Math was established more than 100 years back over plot nos.1127 and 1129 admeasuring 0.171 acres which is equivalent to 5 kathas 14 dhurs and 9 dhurki situated east of Gandhi Maidan at Mahabir Asthan, Main Road under the Gandhi Maidan Police Station in the Town and District of Patna. He submits that out of total area of 0.171 acres, a temple of Lord



Hanuman is built on plot no.1129 over an area of 0.008 acres and the remaining area of 0.163 acres is occupied by the Math which is spread over Municipal Plot no.1127 which is adjacent to Municipal Plot no.1129. He submits that a proceeding under section 107 of the Code of Criminal Procedure was initiated against the Math in 1964 bearing Case No.572 of 1964 but was dropped by the Judicial Magistrate 1st Class, Patna vide order passed on 8.1.1965 placed at Annexure-3 to the writ petition. It is the case of the petitioners that subsequently a proceeding under section 144 of the Code of Criminal Procedure bearing Case No.110 (M) of 1978 was initiated which again drew in favour of the petitioners on 21.3.1978 vide order placed at Annexure-4. It is the case of the petitioners that in addition thereto a Land Encroachment Case No.84 of 1976-77 was also initiated against the petitioner and notice was issued, a copy of which is placed at Annexures 21 to the supplementary affidavit filed on 21.11.2014 charging the petitioner with encroachment over plot nos.1127 to the extent of 300 Sq.ft, which is equivalent to about 5 dhurs. He submits that the matter travelled up to the High Court and vide judgment and order passed on 4.7.1979 in CWJC No.2396 of 1977 the matter was remitted to the appellate authority under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') for consideration of the appeal afresh and



for its disposal in accordance with law. It is stated that the appeal of the petitioners was again dismissed and which was questioned in CWJC No.2324 of 1985 and the Division Bench upon consideration of the matter allowed the writ petition to the extent that the charge of encroachment was confined to the area mentioned in the notice and not in terms of the order passed by the Deputy Collector, Land Reforms. It is submitted by Mr. Dwivedi that in between the petitioner had filed a title suit for declaration of title by way of adverse possession bearing Title Suit No.28 of 1988 and by virtue of the order passed by the Division Bench in CWJC No.2324 of 1985 the plaint was amended and the area was modified accordingly as is manifest from the amended paragraph 12A of the plaint, a copy of which is present at Annexure-23. It is submitted that even when such position existed that the respondent Circle Officer has come up with a fourth round proceedings by registering Case No.1759 (M) of 1987 and a notice was issued to the petitioners to attend the proceedings which notice though charges the petitioners of encroachment over plot no.1127 but does not mention any area. The copy of the notice is placed at Annexure-22 to the writ petition. It is submitted that whereas the Deputy Collector, Land Reforms upon consideration of the facts available on record has adjudicated the matter in favour of the petitioners



vide order passed on 2.12.1997, a copy of which is placed at Annexure-6 to the writ petition but this order has been upset in the appeal preferred by the Circle Officer, Patna Sadar bearing Appeal 3 of 1998-99 which upon consideration by the District Magistrate, Patna has been allowed vide order passed on 15.1.2014 placed at Annexure-1 and being aggrieved the petitioner is before this Court.

The short submissions made by Mr. Dwivedi are that where an encroachment proceedings initiated on identical allegations stands resolved under the orders of the Division Bench passed in CWJC No.2324 of 1985 whereunder the petitioner was found encroaching only to the extent of 300 Sq.Ft. (5 dhurs), the initiation of a second proceedings on self same allegation is illegal, in absence of any fresh circumstance warranting such initiation. He submits that in the circumstances where the respondents themselves are not sure about the area of encroachment and which aspect stands confirmed by the Division Bench in the previous round of proceedings, the orders passed in the present proceeding is arbitrary exercise of statutory power by the authorities under 'the Act'. It is submitted that the petitioner is being harassed for no reason even when the matter remains pending for adjudication before the Civil Court.

The argument of Mr. Dwivedi has been vehemently



contested by Mr. Anjani Kumar, learned Additional Advocate General No.6 and who submits that the matter is not as simple as it is projected by Mr. Dwivedi. With reference to the order of the Deputy Collector, Land Reforms passed as a Collector under 'the Act' present at Annexure-6 to the writ petition he submits that this order is the sheet-anchor for the petitioner. With reference to Annexure-B to the supplementary counter affidavit he submits that plot nos.1127 admeasuring 0.163 Kari is described as '*Parti Kadeem*' and is entered in the name of Secretary of State for India in Council in the Municipal Khatian and although plot no.1129 admeasuring 0.008 Kari is mentioned as Mahabir Asthan but is also entered in the name of the State. It is submitted that the issue that the nature of land in dispute is a public land is no more open for contest in view of the order passed by this Court in CWJC No.2324 of 1985 a copy of which is placed at Annexure-Q to the second supplementary counter affidavit filed on 8.12.2014 whereunder the Division Bench while upholding the encroachment proceeding had only interfered with the area of encroachment. Learned Additional Advocate General next referred to Annexure-G to the supplementary counter affidavit to submit that the title suit bearing T.S. No.28 of 1988/23 of 1994 filed by the plaintiff has been dismissed vide judgment and decree passed on 23.9.1994 a copy of



which is placed at Annexure-G. He submits that issue nos.7 and 8 framed by the trial court is on the aspect whether the plaintiff was entitled to a decree of title by way of adverse possession or is entitled to any other relief and both the issues have been decided against the plaintiff. He submits that the plaintiff- Mahanth has filed Title Appeal No.145 of 1994 against the judgment and decree of the trial court but which is pending and although an application was filed seeking permission to adduce additional evidence but the application was dismissed vide order present at Annexure-I to the supplementary counter affidavit. It is stated that thereafter the appellant moved an application for injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure for restraining the respondents from alienating or changing the nature of the suit property and from disturbing the appellant from the peaceful possession of the property but which prayer for injunction was refused by the appellate court vide order passed on 26.3.1914 present at Annexure-J to the supplementary counter affidavit. He thus submits that in view of the circumstances where the suit of the petitioners stands dismissed and their prayer for injunction has been refused by the appellate court, they are not entitled for any indulgence by this Court. Learned Additional Advocate General responding to the present round of proceedings submits that it is not



correct that the details are not mentioned in the notice rather initially a quasi criminal proceeding was initiated against the petitioner-Mahanth and a notice to that effect was issued which is present at Annexure-22 but the said proceedings were later drawn by the Deputy Collector, Land Reforms on transfer and whereafter a fresh notice was issued to the petitioners, a copy of which is placed at Annexure M to the second supplementary counter affidavit and which clearly explains the area of encroachment to the extent of 3550 Sq.ft. over plot no.1127. With reference to the said notice it is stated that the notice has been issued under section 3 of 'the Act' by the Collector under 'the Act' requiring the petitioner to respond to the charge of encroachment. It is stated that as against the order passed by the Deputy Collector, Land Reforms in Encroachment Case No.1759M of 1987, a copy of which is placed at Annexure-6, the Circle Officer filed an appeal giving rise to Encroachment Appeal No.3 of 1998-99 which was allowed vide order passed on 3.11.1999 and was questioned by the petitioner before this Court in CWJC No.11351 of 1999. A Bench of this Court taking note of the fact that the appeal had been disposed of without notice to the writ petitioner, allowed the writ petition and after quashing the appellate order remitted the matter to the appellate authority for its disposal afresh and in accordance with



law. The proceedings before the Collector was again questioned by the petitioner in CWJC No.1615 of 2008 when he charged the respondent-State of proceeding to interfere with the possession even when the matter was pending before the appellate authority and a Bench of this Court vide order passed on 12.5.2008 present at Annexure-E disposed of the matter with a direction to the appellate authority to dispose of the appeal within three months and until such time the parties were directed to maintain status-quo with regard to the subject-matter. It is stated that the matter has been considered in its entirety by the Collector as the appellate authority who by the impugned order has confirmed the encroachment by the petitioners and it is pursuant thereto that the notice present at Annexure-2 to the writ petition has been issued which suffers from no infirmity. It is thus the submission of learned Additional Advocate General that in the circumstances discussed the order passed by the Collector as an appellate authority under 'the Act' present at Annexure-1 as well as the notice issued pursuant thereto as contained in Annexure-2 does not call for any interference.

I have heard learned counsel for the parties and I have perused the materials on record.

Although extensive arguments have been advanced both by Mr. Dwivedi, learned senior counsel appearing for the



petitioners as well as Mr. Anjani Kumar, learned Additional Advocate General No.6 but in my opinion, this matter does not require any extensive discussion. That plot no.1127 is a public land is not in contest nor this issue is any more open for contest in view of the earlier round of encroachment proceedings arising from Case No.84 of 1976-77 which culminated in the order passed by the Division Bench in CWJC No.2324 of 1985 a copy of which forms part of Annexure-19 series as well as Annexure-Q to the second supplementary counter affidavit. The Division Bench without interfering with the encroachment proceedings has merely modified the area of encroachment. This single aspect confirms the fact that plot no. 1127 is in the nature of public land.

In fact the very filing of Title Suit No.28 of 1988 by the petitioners praying for a declaration of title by way of adverse possession over the plots in question by itself confirms the title of State over the land. Even this claim of the petitioner stands rejected under the judgment and decree of the trial court passed on 23.9.1994, a copy of which has been placed at Annexure-G to the supplementary counter affidavit. The worries of the petitioners does not end here and even their prayer for injunction made in Title Appeal No.145 of 1994 preferred against the judgment and decree of the trial court stands rejected by the appellate court on

28.11.2013.

The cumulative effect of the circumstances discussed hereinabove is that the land in question is admittedly a public land and the claim advanced by the petitioners for declaration of their title and possession by way of adverse possession not only stands negated by the trial court rather the appellate court has even refused their prayer for injunction.

In the circumstances the order passed by the Collector, Patna in Encroachment Appeal No.3 of 1998-99 present at Annexure-1 as well as the notice dated 20.1.2014 issued by the Circle Officer, Patna Sadar present at Annexure-2 does not suffer from any infirmity requiring any interference.

For the reasons aforementioned, I find no merit in the writ petition and which is dismissed accordingly.

(Jyoti Saran, J)

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