

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19819 of 2010

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1. Madhusudhan Singh S/O Chandrashekhar Singh R/O Vill.- Kapur Pakari, P.S.- Sikarganj, Distt.- East Champaran, At Motihari, Presently Residing In Mohalla-Amlapatti, Dhram Samaj Chowk, Motihari, P.S.-Motihari (T), Distt.- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, East Champaran at Motihari
3. The Sub-Divisional Officer, Sadar, Motihari, East Champaran
4. The Senior Deputy Collector District General Section, East Champaran At Motihari
5. The Circle Officer, East Champaran At Motihari
6. Principal Secretary, Tourism Department, State Of Bihar At Patna
7. Joint Secretary, Tourism Department, State Of Bihar at Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr. Shankar Kumar AC to AAG15

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 11-09-2015

Heard Mr. Sumeet Kumar Singh appearing for the petitioner and AC to AAG-15 for the State.

Pleadings have been exchanged between the parties.

The writ applications seeks appropriate order/ direction commanding the respondents authorities particularly the respondent-Sub Divisional Officer, Sadar, Motihari not to stop/obstruct in any manner the petitioner from dealing with the property including the construction standing over the plot nos. 2134, 2135, 2136 and 2139 bearing Municipal Holding No. 36, measuring a

total area of 2 kathas 15 durs situated in Mohalla Amlapatti falling within the Motihari police station in the District of East Champaran. The petitioner has detailed the manner in which the subject land was acquired by his descendants in the year 1969 from late Gorakh Prasad and became the owner in possession thereof. The writ application was filed with the aforesaid grievance.

Counsel for the petitioner refers to the statements made in paragraph nos. 13 and 14 of the counter affidavit filed by the Senior Deputy Collector General Section, East Champaran, Motihari. On going through the averments made therein, it appears that the respondents had directed the petitioner to stop construction over the land and change the physical feature of the structure standing thereon since last several years. This was with a view to preserve the structure which was of historical importance, as according to the respondents, father of nation Mahatma Gandhi had stayed in the said house for few days in connection with the Satyagrah movement which was ignited by him in the East Champaran which later turned the course of freedom struggle. The respondent- Tourism department has also filed an affidavit. Para 8 and 9 therefore merits to be extracted hereinbelow:-

“8. That the District Magistrate, Motihari vide his letter no. 311 dated 20.04.10 submitted a proposal and requested the respondent i.e. Department of

Tourism, Govt. of Bihar to allot him Rs. 1,15,50,000/- for the acquisition of the said land.

9. That, later on, the petitioner submitted two representation dated 20.04.10 and 28.07.10 to Department of Tourism, Government of Bihar which were forwarded to District Magistrate Motihari vide its letter no. 958 dated 19.5.10 (Annexure-3 of the writ) and 1726 dated 31.08.10 to enquire into the points raised in the said representations and submit a report to the Department so that necessary further steps may be taken . The report/comments of the District Magistrate is still awaited. The Department of Tourism, Govt. of Bihar has not yet sanctioned any project in this regard.”

On the strength of the aforesaid statements made on behalf of the respondent nos. 6 and 9, it has been stated that no proposal whatsoever for the present, is pending with the Government to acquire or requisition the property in question in accordance with law. If that be so then the obstruction which is said to have been put on the petitioner in dealing with the property in the manner he wishes appears an arbitrary exercise of the power by the respondents. On the first date of hearing of the writ application on 08.12.2010 Status quo was granted. By virtue of the said order, it has been informed at the Bar that no further construction has been taken by the petitioner on the land in -question.

Having considered the submissions made on behalf

of the parties, and after perusal of the pleadings on record what appears to this Court is that in the estimation of the respondent- State the construction standing on the subject land has historical importance. However, no action or step till date appears to have been taken by the respondents to acquire the land according to the laid down procedure. In fact, the counter affidavit filed on behalf of the respondents nos. 6 and 7 categorically states to the same effect. If that be so, the restraint order, if any, issued by the respondents particularly the respondent Sub Divisional Officer , Sadar, Motihari (respondent no.3) would be an arbitrary exercise of power which the Court cannot countenance. Any person having property has a legal right to hold possess and deal therewith until such right is taken away by the respondents State in a manner provided in law.

Under these circumstances, the writ application is allowed. The respondents State are restrained from obstructing, in any manner, the petitioner from dealing with the subject matter and structure standing thereon until they take any step for acquisition of the subject land and the construction standing thereon in accordance with law.

(Kishore Kumar Mandal, J)

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