

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7293 of 2014

=====

Janak Devi Wife of Banshi Prasad, Resident of Mohalla- Rajendra Nagar (Old By
Pass Stand), District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Nawada.
3. Executive Engineer, Building Division, Nawada.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sheo Kumar Prasad, Advocate
For the State	:	Mr. B. K. Yadav, S.C. 18
		Mr. Aditya Nath Jha, A.C. to S.C. 18

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 14-12-2016

Heard learned counsel for the parties.

The petitioner has moved this Court for setting aside the order dated 25.01.2014 passed by the L.R.D.C., Nawada in Nawada Sadar Case No. 78 of 2012-13 by which the petitioner has been directed to stop construction work on the land in question till the pendency of Title Suit No. 62 of 2004.

Learned counsel for the petitioner submitted that the order passed is without jurisdiction as the matter relating to title cannot be decided by the revenue authorities. It was further submitted that the issue was once settled in Title Suit No. 16 of 1999 in which by judgment dated 31.03.1999, the suit was decreed in his favour against private persons. Learned counsel submitted that the petitioner



has also filed Title Suit No. 62 of 2004 against the non fixation of fair rent by the State for the land in question and, thus, if at all the State has any grievance with regard to the petitioner making construction on the land in question, it should move before the Court and seek an injunction.

Learned counsel for the State submitted that the Court may not interfere in the matter for the reason that the revenue authorities in the year 2001 itself had rejected the prayer for fixation of fair rent in favour of the petitioner for the land in question and thus the same has attained finality and only in the year 2004, by filing Title Suit No. 62 of 2004, the petitioner has assailed the order and unless she gets an order in her favour, she could not be allowed to change the nature of the land. He submitted that the onus is on the petitioner, who has filed the title suit, to seek injunction and it is not for the State authorities to file a petition for injunction in the suit filed by the petitioner. It was further submitted that, *prima facie*, the claim of right and title of the petitioner on the land in question has not found favour with the authorities prompting the petitioner to move the Civil Court of competent jurisdiction. Thus, in view of the revenue records wrongly disclosing entries in the name of private persons, steps have been taken for correction.

Having heard learned counsel for the parties,



without going into the technicalities, since the petitioner has already filed Title Suit No. 62 of 2004 being aggrieved by non fixation of fair rent in her favour, till the time the suit is decided, the position would remain that the State has not accepted the right and title of the petitioner on the said land and thus fixation of fair rent in her favour has been refused. This being the position, the petitioner cannot be allowed to change the nature of the land, by making construction, till the Civil Court decides the matter. Moreover, the petitioner having filed the suit, it is within his competence to approach the Court for any interim order restraining the State from interfering in her developing the land in question. The State cannot be saddled with the onus to move the Court for any injunction against the petitioner as it is the petitioner who has to file a petition for restraining the State authorities from interfering in the enjoyment or for permitting the use of the land by the petitioner. Once the revenue authorities have rejected the prayer for fixation of fair rent in favour of the petitioner, there is a presumption that the petitioner does not have valid/legal proof that she is the lawful owner of the land, and thus, the Court does not find any illegality in the order of the authorities restraining her from making any construction. The authorities have neither evicted her nor have taken over possession under the impugned order, and thus, the Court does not find it to be a fit case where it should



exercise its prerogative, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India, as interference would mean giving premium to a party who, as of now, has not been found to be having a valid claim to the land in question.

Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

Anand Kr.

AFR/NAFR	
U	

