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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7471 of 2016

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1. Vijay Kumar Mishra,
2. Uday Kumar Mishra,
3. Jay Kumar Mishra,
4. Ajay Kumar Mishra,
5. Sanjay Kumar Mishra @ Binny Mishra

All sons of Late Nageshwar Mishra, resident of Laxman Das Bhawan, Afzalpur Thakurbari, Opposite Patna University Main Administrative Building, P.S. Pirbahore, P.O. Patna University, District- Patna.

.... Petitioner

Versus

1. The State of Bihar,
2. The District Magistrate, Patna,
3. The Sub Divisional Magistrate, Sadar, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Officer-in-Charge, Pirbahore Police Station, Patna.
6. The Patna University, Patna through the Vice Chancellor,
7. The Vice Chancellor, Patna University, Patna.
8. The Pro Vice Chancellor, Patna University, Patna.
9. The Registrar, Patna University, Patna.
10. The Engineer, Patna University, Patna.

.... Respondents

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Appearance :
For the Petitioner : Mr. Pravin Kumar Sinha, Advocate
For the P.U. : Mr. Ram Chandra Pd. Bharti, Advocate
For the State : Mr. Pankaj Kumar, S.C. 12

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 03-08-2016

Heard parties.

Notices dated 12.03.2016 were issued under Annexure 4 series in terms of the direction of a Division Bench of this Court dated 21.12.2015 for removal of the illegal constructions in the name of religious institution around the campus of the Patna University.

It is contended that on 29.06.2015, a Division Bench of

this Court had passed an order, a copy of which has been appended as Annexure 2, with a direction for removal of encroachment only in respect of the land owned by the University. If there is a dispute as regards the identification or demarcation, the affected persons were granted liberty to approach the District Magistrate. Secondly, such persons who hold valid title of the land in respect of their occupation, they would approach the civil court by producing relevant title deeds for declaration of their title as Division Bench was not inclined to entertain such request at that stage.

It is submitted on behalf of the petitioners that, thereafter, they approached the civil court of competent jurisdiction by filing title suit no.430/2015 for declaration of their title over the property concerned. Summons were issued in the title suit. But the Patna University chose not to appear in the matter. The notices were, thereafter, published in newspaper also. Even then when no one appeared on behalf of the Patna University to answer the allegation of the petitioners, the matter proceeded ex parte. Issues were framed, evidences were led and, after appreciation of evidence, a detailed judgment has been pronounced. Copies of the judgment and decree have been appended as Annexure 3. It is contended that once the title of the property stands declared in favour of the petitioners, they cannot be ousted by the Patna University as the petitioners'

occupation cannot be held to be illegal.

Counter affidavit has been filed on behalf of the Patna University. A stand has been taken that the Circle Officer has informed that petitioners' name have not been entered in the Register II and also the Patna University could not be represented in title suit concerned as there was no empanelment of the advocate in the case pending in civil court, Patna and also for the reason that the Patna University was waiting for the reply of the Circle Officer with respect to the entry of the names of the petitioners in Register II.

In my considered opinion, the aforesaid stand taken by the Patna University is wholly misconceived. Entry made in revenue records of rights or in the revenue records are rebuttable and it has been held that the same neither creates nor extinguishes right, title and interest. That apart, the Patna University has not come with its case as to how it is claiming the aforesaid land? Whether the land stands entered in the same Register II of the Patna University? If yes, then it should have appeared in the title suit and placed their case and if no then what is the basis of such submission? This question has not been answered.

Be that as it may, since the decree and judgment has been obtained by the petitioners by a competent court of civil jurisdiction in which the Patna University was a party but admittedly chose not to

appear, would be binding upon the parties till the same is set aside, modified or altered. It is urged on behalf of the Patna University that the petitioners have obtained ex parte decree. That is also not of much relevance as unless the decree is set aside, the Patna University would not have any authority to oust the petitioners from the concerned property.

Accordingly, this writ application stands disposed of holding that till the decree in favour of the petitioners is intact, the petitioners cannot be ousted on the ground that they are illegally occupying the property. As a result, the impugned notices are quashed and set aside as admittedly having been issued after passing of the judgment and decree dated 25.01.2016.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
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