

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19993 of 2010

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Prabhakar Jaiswal, S/O C.P. Jaiswal, R/O- Chatauni Chowk, P.S. Chatauni,
District- East Champaran, Presently Secretary of Sports Club, Motihari.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, East Champaran.
3. Circle Officer, Motihari, East Champaran
4. The Executive Officer, Motihari Nagar Parishad, District- East Champaran.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Manish Kumar

For the Respondent-State : Mr. Rajesh Kumar Sinha, AC to GP-25

For the respondent Nagar Parishad: Mr. Raghwanand

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-02-2016

Heard Mr. Manish Kumar, learned counsel appearing for
the petitioner, Mr. Rajesh Kumar Sinha, learned A.C. to G.P.-25
for the State and Mr. Raghwanand, learned counsel appearing for
the Nagar Parishad, Motihari.

Even when the order impugned in this writ petition draws
its strength from the order passed by the District Magistrate, East
Champaran, the lead argument has been advanced by the
Municipality. Plainly speaking, the Municipality with the aid of the
State power and drawing strength from the order passed by the
District Magistrate, East Champaran is trying to grab the land of
the raiyat wholly illegally and without following the due process of
law.

Briefly enumerating from the facts as pleaded in the writ
petition, it is noticed that the land in question bearing Khata No.



22, Khesra Nos.96, 97 and 98 on which the Sports Club, Motihari, established in 1911, presently exists, belonged to M/s Motihari Concern Estate Ltd. The sale deed present at Annexure-1 is dated 15.12.1925 and manifests that one Mr. W.S. Irwin, a Manager and attorney-holder of the Motihari Concern Estate Ltd. executed the sale deed in favour of the Motihari Sports Club and one Babu Satyadas Mitra who is stated to be the first Secretary of the club. The sale deed confirms three important aspects namely:

- a) The land belongs to M/s Motihari Concern Estate Ltd. of which Mr. W.S. Irwin happened to be the Manager -cum- attorney-holder;
- b) The Motihari Sports Club was established in the year 1911; and
- c) Mr. W.S. Irwin executed the sale deed on 15.12.1925 in favour of Mr. Babu Satyadas Mitra stated to be the first Secretary of the Club.

Now there is no dispute that thereafter and with effect from 1925, the Motihari Sports Club enjoyed the right, title, interest and possession over the property in question and has been paying revenue to the Government. It is after more than 90 years and after the Municipality was constituted at Motihari that the respondent authorities have had an awakening to enquire whether the land registered with the Motihari Sports Club belongs to them



or is a government land. For it is only in such circumstances that he could have any jurisdiction to enquire into the management and upkeep of the Sports Club. Unfortunately the District Magistrate, East Champaran without even bothering to satisfy himself as to whether he had any right or jurisdiction to enquire into the private transaction since the property admittedly rests in the private hands that he has proceeded to exercise jurisdiction over the property in question and to pass the order on 24.11.2010 holding the land to be a Government land and hence the land together with the management of the Motihari Sports Club stands transferred to the municipality.

In my opinion the assumptions are factually and legally incorrect. The sale deed present at Annexure-1 dated 15.12.1925 confirms that the land belonged to M/s Motihari Concern Estate Ltd. and was transferred by a registered sale deed in favour of the Secretary while upholding the character of the Club. The District Magistrate has ignored these relevant facts and has completely misdirected himself to rely upon the 74th Constitutional amendment incorporating Chapter IX A upholding the constitutional rights of the Municipalities, Section 58 of the Bihar and Orissa Municipal Act, 1922 read with the provisions of Section 100 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), to order for transfer of the property and the right,

title and ownership of the Motihari Sports Club in the Municipality.

In my opinion the right, title, interest and possession held by the Club over the lands in question is by virtue of the sale deed present at Annexure-1 which is dated 15.12.1925 and has never been questioned by any, much less the respondents herein on its validity and legality before a competent court of law. The name of the Club finds admittedly mentioned in the Khatian and its nature is described as 'Gair Mazarua Mokarridar' meaning thereby uncultivable land under a lease in perpetuity. Thus until such time that there is an adjudication on the validity of the sale deed dated 15.12.1925 by a court of competent jurisdiction the District Magistrate or the Municipality has no business to interfere in the affairs of the Motihari Sports Club.

A valiant effort was made by Mr. Raghwanand to colour that the sports club is of public interest and there have been donations by public representative but I fail to appreciate as to how such voluntary act can bestow a right on the State and its authorities to interfere with the right of the club over the lands in question which cannot be encroached upon, save and except under authority of law for any such action would be violative of the constitutional guarantee present in Article-300A of the Constitution of India.

Another issue raised by Mr. Raghwanand is that the petitioner has no locus for he is yet to establish his status as the Secretary of the Club. In my opinion the issue in contest is whether the power exercised by the respondents authority is de hors the law and not the locus of an individual to raise voice against the action of the respondents which on face is illegal and without jurisdiction. I am thus not persuaded to enter into the issue of the locus in the nature of the dispute that is sought to be adjudicated herein.

For the reasons aforementioned the directives issued by the Executive Officer, Nagar Parishad, Motihari bearing Letter No. 1405 dated 25.11.2010 along with the order of the District Magistrate, East Champaran at Motihari bearing Memo No. 1629 dated 24.11.2010 impugned at Annexure-8 cannot be upheld and is accordingly set aside. Since the possession of the premises in question was directed to be handed over to the petitioner under interim order passed on 10.1.2011, the same stands confirmed.

The writ petition is allowed.

(Jyoti Saran, J)

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