

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3199 of 2015

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1. Sunil Kumar Singh
2. Anil Kumar Singh Both sons of Late Anand Pati Singh, resident of Mohalla -
Kurji Bridge, P.O. Sadakat Ashram, P.S. Digha, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and
Land Reforms, Government of Bihar, Patna
2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna
3. The Secretary, Road Construction Department, Government of Bihar, Patna
4. The District Magistrate, Patna
5. The Land Reforms Deputy Collector, Patna
6. The Anchal Adhikari, Sadar Anchal
7. The Halka Karamchari, Patna Sadar Anchal, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Adv.
Mr. Bal Bhushan Choudhary, Adv.
Mr. Manish Kishore, Adv.

For the Respondent/s : Mr. Madanjeet Kumar, G.P. 20

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 08-11-2016

Heard the parties.

The petitioners have filed the present writ petition under
Article 226 of the Constitution of India for the reliefs enumerated in
paragraph-1 of the writ petition, which reads as follows:

“1. That the present writ application has been filed on
behalf of the above named petitioners for the issuance of
appropriate writ(s)/ order(s)and/ or direction(s) in respect of
the following relief:-

(I) The Respondents No. 6 and 7 be directed to
accept payment of rent and to grant rent
receipt as usual in respect of their Raiyati Land
measuring 10 Bigha 18 Katha situated in
village Hamidpur Digha of Survey Mauja-
Mainpur Diara, bearing Thana No.140 under
Tauzi No. 5070 unsurveyed having dimension

277 Bans long North to South and width East to West 14 Bans towards North and 17 ½ Bans towards South and bounded as follows:-

North : Siwana Mauja Hamidpur Khas Mahal

South: Part Plot No. 568, Thana No.2

East : Siwana Korji Hissa Sasum

West: Mauja Haza Takhta Babu Nandu Singh and others.

(II) The Respondents be prohibited from interfering with the actual physical cultivating possession of the petitioners upon the said land in any manner whatsoever except in accordance with law.

(III) The Respondents be further restrained from constructing any Road on any part of the said Raiyati Land of the petitioners without taking recourse of the provisions of the Land Acquisition Act in case said land or its part is required by the Respondents for any Public purpose.

(IV) Any other relief or reliefs for which the petitioners may be deemed entitled to be also granted.”

The learned counsel appearing on behalf of the petitioners submits that originally rent receipt was issued in favour of their father with respect to the lands in question, fully detailed in paragraph-1 of the writ petition itself. However, after death of their father, rent receipt is not being issued to the petitioners. It is contended that for issuance of rent receipt, he filed several applications to the respondent Anchal Adhikari, Patna Sadar, but rent receipt has not been issued to the petitioners till date.

However, despite repeated queries, he has not been able to show any document that any petition under prescribed format either under the provisions of the Bihar Land Mutation Act, 2011 (in short ‘Act, 2011’) and the rules made thereunder, or under the provisions of The Bihar Tenant’s Holdings (Maintenance of Records) Act, 1973 was ever filed by the petitioners before the prescribed authority. Yet,

it is contended that in view of certain documents available on the record, the respondents may be restrained from taking physical possession over the lands in question.

The matter has been contested by the respondents by filing two separate counter-affidavits, one on behalf of the respondent no.3 and other on behalf of the respondent no. 4 to 7. In aforesaid two counter-affidavits, the claims raised on behalf of the petitioners with respect to the lands in question have been disputed. In the counter-affidavit filed on behalf of the respondent no.3, it has been averred in paragraph-10 that the documents relied upon by the petitioners are suspicious in nature, which cannot be appropriately decided in the present proceeding filed under Article 226 of the Constitution of India. In the counter-affidavit filed on behalf of the respondent nos. 4 to 7, it has been specifically asserted in paragraph-4 that the lands in question is unsurveyed land and it belongs to the State Government. It has been further stated that the land has been handed over to the Road Construction Department for the purposes of construction of Ganga Path. The facts pleaded in the counter-affidavits have been disputed by the petitioners by filing their rejoinder-affidavit.

After having heard the parties and taking into consideration the entire materials available on the record, this Court is of the opinion that the claims raised on behalf of the petitioners with respect to the lands in question are based on disputed question of facts, which cannot be appropriately considered and decided in the present proceeding filed under Article 226 of the Constitution of India. Furthermore, the petitioners have not filed any petition even for mutation of their names with respect to the lands in question under the provisions of the Act, 2011 or the Act, 1973, though admittedly their father died long ago. Indisputably, the lands claimed by the petitioners

are unsurveyed and unidentified.

In above view of the matter, this Court is not inclined to accede to the prayer made on behalf of the petitioners with respect to the lands in question. The writ petition is devoid of merit and is, accordingly dismissed.

However, the petitioners, if so advised, shall be at liberty to approach the civil court of competent jurisdiction for getting their right, title and possession declared over the lands in question. If such a civil suit is brought by the petitioners within a period of three months from today, after impleading all the necessary parties including the respondents herein, then the same shall be considered and decided on its own merit without being prejudiced by the dismissal of the present writ petition.

(Birendra Prasad Verma, J)

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Transmission Date	