

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9636 of 2015

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1. Durgesh Narayan Sinha, Son of Late Rai Bahadur Shyamdev Narayan Sinha,
Resident of village/Mohallah- Bhagwan Bazaar, P.S.- Bhagwan Bazaar, District-
Saran, Chapra

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Divisional Commissioner, Saran at Chapra,
3. The District Magistrate, Saran at Chapra,
4. The Superintendent of Police, Saran at Chapra,
5. The Deputy Collector Land Reforms, Sadar, Chapra,
6. The Sub-Divisional Officer, Sadar, Chapra,
7. The Circle Officer, Sadar, Chapra
8. The Sub-Divisional Police Officer, Sadar, Chapra,
9. The Executive Officer, Chapra Nagar Parishad, Chapra,
10. The Circle Officer, Sadar Block , Chapra,
11. The S.H.O., Bhagwan Bazar Police Station, Chapra,
12. The Tax Collector, Chapra Nagar Parishad, Chapra

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Advocate
For the Respondents : Mr. Ajay Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-01-2016

In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction for quashing the order dated 26.3.2015 (Annexure-7) passed by the respondent- District Magistrate restraining the petitioner from carrying out any construction and incidental work on Khesra no. 5820, Pokhra, within Chapra Nagar Parishad, Mohalla- Shiv Bazar, P.S. Bhagwan Bazar, Dist. Saran holding it to be the Government property/land. The consequential order dated 10.04.2015 passed by the Sub Divisional Officer (Annexure-8) has also been challenged.

The subject land was a pond. It was recorded as such in the name of Maharaja Guru Mahadeo Ashram Prasad Sahi

Bahadur who was the ex -landlord. According to the petitioner, Babu Sahindra Nath was the tenure holder under the Raja. Sahindra Nath put Gujra Kuer as Mekaridar and a document to this effect was executed. Gujra Kuer died leaving behind only one son Har Prasad who died issueless. He, however, adopted Raghuni Prasad as Karta putra. Raghuni Prasad had a son called Radha Kishun who died during the life time of his father. Raghuni Prasad died leaving behind his wife Most. Tishra and grandson Gautam Sah @ Gautam Prasad. Most. Tishra on her behalf and on behalf of minor grandson executed a sada patta creating fishing right in favour of the father of the petitioner. After having come over possession of the Pokhra, the petitioner filed a petition under Section 112 of the B.T. Act for assessment of the rent before the Circle Officer vide case no. 1 of 1967-68 which was allowed vide order dated 25.11.1967 (Annexure-2) finding the petitioner in possession of the pokhra/subject land. It is further stated that a Title suit in respect of part of the subject land was filed by the petitioner vide Title/ Partition Suit no. 126 of 1986 against private defendants in which a declaration was made by the Court vide judgment and decree dated 21.5.2007 and 29.5.2007 respectively of the title of the petitioner and holding further that the defendant was encroacher. An appeal was preferred thereagainst which, however, was disposed of in accord with the compromise entered between the parties. It is further stated that the pokhra in due course of time was filled up with soil and the petitioner continues in

possession thereof. In the municipal record, the name of the petitioner was entered inasmuch as land possession certificate has also been issued. The intervenor respondent made an application against the purported title and possession of the writ petitioner over the subject land which called for an enquiry conducted by the respondent- DCLR wherein the possession of the petitioner was found over the subject land. The District Magistrate abruptly by the impugned communication dated 26.03.2015 (Annexure-7) on the basis of a complaint made by the intervenor respondent restrained him from making any construction over the subject land treating it to be the government land. Said communication also states that a Public Interest Litigation in respect of the subject land was pending consideration before this Court. The consequential order was passed accordingly by the Sub Divisional Officer (Annexure-8).

I have heard Mr. Bindhyachal Singh, advocate for the petitioner, Mr. Ajay Kumar Singh for the intervenor respondent and the counsel for the State.

It has been submitted by Mr. Bindhyachal Singh that although right to property is not a fundamental right still it is a constitutional right. Before passing any order by the respondent-District Magistrate restraining the petitioner from enjoyment of the subject land an opportunity of hearing ought to have been given to him. This was all the more necessary since the Public Interest Litigation filed by the intervenor-respondent was disposed of granting

no relief to the intervenor respondent vide order dated 03.08.2015 (Annexure-9). The impugned order is based on mere presumption that it is water body (pokhra) ignoring the decree of the Court. The revenue authority has no inherent power under the statute to act in the manner they have acted on a complaint lodged by the intervenor respondent. He highlighted the sanctity of the decree in such matter and relied on **1988 BLJ 959 [Jokhan Mian vs. State of Bihar & Ors.]** and **2002 (2) PLJR 243 [Shakti Nath Jha vs. State and Ors.]**.

Conversely, Mr. Ajay Kumar Singh, while supporting the impugned orders contended that the District Magistrate is the custodian of the public land falling in the District. The State of Bihar though the appropriate authority, indisputably, was not a party to the Title Suit filed by the writ petitioner. The judgment and decree passed therein would, therefore, not bind the State. Several such Title Suits were filed by the petitioner or some other claimants over the land of the pond in which compromise was entered between the parties. Relying on unreported order passed in MJC No. 3011 of 2014, it has been submitted that the State was supposed to file a suit for declaration of right, title and interest of the State over the subject land and/or to nullify the judgment and decree passed in Title/Partition suit no. 126 of 1986 filed by the writ petitioner.

On a consideration of the rival submission, in my view, this Court in writ proceeding should not decide the rival

claims of the parties over the subject land. This is a matter to be agitated by the aggrieved party before the Court of competent civil jurisdiction. However, on a consideration of the materials on record, it does appear that there are some orders passed by the revenue authorities as well as the municipal authority in favour of the petitioner. The respondent District Magistrate, in such circumstance, before passing the restraint order ought to have issued a notice to the petitioner seeking his explanation against the proposed order. This procedure would have given an opportunity to the petitioner to place his case for consideration. It may be recounted here that the PIL matter was disposed of by this Court granting no relief to the petitioner (intervenor-respondent). The order impugned definitely is prejudicial to the petitioner who is claiming his title and possession over the subject land on the strength of orders passed by the revenue authority as well as the municipal authority. In my considered view, in not affording an opportunity of hearing to the petitioner before passing the impugned order(s), the respondents have gravely erred in law.

For the aforesaid reason, this Court is persuaded to dispose of the writ petition by the following order:-

The communication dated 26.03.2015 (Annexure-7) issued by the District Magistrate shall be treated as a notice to the petitioner to submit his explanation against the proposed action/order with respect to the subject land. The petitioner shall file his response

thereto before the District Magistrate within 04 weeks from today.

The respondent- District Magistrate shall thereafter consider the explanation of the petitioner and pass a fresh order, if need be, in accordance with law. In doing so, the respondent- District Magistrate shall not be prejudiced by the opinion expressed in the impugned communication dated 26.03.2015 (Annexure-7). In case, the District Magistrate fails to pass order within four weeks from the date the petitioner files his response the impugned order(s) shall cease to have effect.

The writ application is disposed of in the aforesaid terms.

(Kishore Kumar Mandal, J)

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