

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15569 of 2015

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Satyadeo Thakur S/o Late Brahmadeo Misar, resident of village- Kabela,
P.S.- Parbatta, Distt- Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Khagaria
3. The Subdivisional Magistrate, Gogari Dist- Khagaria
4. The Circle Officer Parbatta, P.S. Parbatta, Dist. Khagaria
5. The District Education Officer, Khagaria, P.S. & District- Khagaria
6. The Head Master Middle School cum Utkramit High School Kabela P.S.
Parbatta, District- Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Adv.
Mr. Dineshwar Prasad Singh

For the Respondent No.1 to 5: Mr. Md. N. Hoda Khan- SC-18
Mr. Mde. Naushaduzzoha, AC to SC-18

For the Respondent No. 6 : Mr. Bamdeo Pandey
Mr. Jitendra Pandey

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 15-01-2016 Heard the parties.

The petitioner has 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 this is an application for issuance of an appropriate writ/ writs, order/orders direction/directions in the nature of mandamus directing the respondents not to interfere in peaceful possession of the petitioner in respect of the land appertaining to Tauzi No. 525, Khata No. 134, Plot No. 428, Area 1 Bigha situated at Mauja Kabala under the district of Khagaria as well as for other relief/s for which the petitioner is entitled in the facts and circumstances of the case.”

This matter was heard earlier on 16.10.2015 and notice was issued to the respondent no.6. The learned State counsel appearing on behalf of the respondent no. 1 to 5 was also directed

to file a comprehensive counter-affidavit.

In the light of the aforesaid order dated 16.10.2015, a counter-affidavit has been filed on behalf of the respondent no. 2 to 5 stating therein that the land in question does not belong to the petitioner and the nature of land is Gairmajarua Khas (Kabile Zirat). It has also been stated that over the lands in question multiple Government buildings as old Gram Panchayat Bhawan, Panchayat Sarkar Bhawan and Middle School, Kabela are existing. It has further been stated that Gram Panchayat Bhawan is two decades old building and Middle School, Kabela is much older. In the aforesaid counter affidavit, it has been claimed that the land in question is in possession of the State and not that of the petitioner.

The respondent no.6 has also filed a separate counter-affidavit stating therein that the documents, as contained in Annexure-1 and 2 of the writ petition i.e. parawana issued by the landlord and the receipt issued by the ex-landlord are forged documents. It has further been stated in the aforesaid counter-affidavit that the lands in question is a Gairmajarua land over which father of the petitioner was never in possession. Besides that, other plea taken by the petitioner in support of his claim over the lands in question have been controverted by the respondents.

Law is well settled that on the basis of disputed question of facts, no writ can be issued by the High Court in exercise of its power under Article 226 of the Constitution of India. Reference may be made to the Judgement of the Apex Court in the case of **D.L.F. Housing Construction (P) Ltd. V. Delhi Municipal Corpn.** [AIR 1976 SC 386 = (1976) 3 SCC 160] Para 18.

In above view of the matter, the present writ petition is

dismissed. However, the petitioner, if so advised, shall be at liberty to approach the civil court of competent jurisdiction for declaration of his right, title and possession over the lands in question and for grant of other consequential reliefs.

(Birendra Prasad Verma, J)

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