

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1874 of 2016

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Rajarshi Kumar, son of Late Saroj Kumar, resident of Village + P.O. + P.S.- Bihta,
District- Patna.

.... Petitioner/s

Versus

1. Indian Railway, through its General Manager, East Central Railway, Hajipur.
2. The State of Bihar through the Collector, Patna
3. The Land Acquisition Officer, Patna.
4. Hindustan Petroleum Corporation Limited through its Senior Regional Manager and duly constituted attorney having its registered office at Lok Nayak Bhawan, 6th Floor, Dak Bunglow Road, P.S.- Kotwali, District- Patna.
5. Senior Project Officer, Hindustan Petroleum Corporation Limited, having its office at Lai Road, P.S.- Bihta, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh

For the Respondent/ : Mr. Indra Deo Prasad SC-27

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 29-08-2016

Heard Mr. Kamal Nayan Choubey for the petitioner, Mr. A.K.

Keshari for the respondent-Railways, Mr. Rajiv Prakash for the respondent nos. 4
and 5 as well as the counsel for the State.

The writ application invokes the extraordinary equitable jurisdiction of the Court to direct the respondents, particularly, the respondent Railways to remove the encroachment from the land of the petitioner appertaining to plot nos. 96 (78.6 decimals) and 97 (15 decimals) in Mouja- Bihta, in the District of Patna and a further direction upon the respondents to provide passage to the land of the petitioner.

According to the petitioner, owing to acquisition of land made by the respondent-Railways several decades ago, the land of the petitioner has become inaccessible. Alternatively, a prayer is made to direct the respondent-Railways to acquire the land of the petitioner on payment of adequate compensation.

Earlier to the present one a writ petition being C.W.J.C. No. 14518 of 2011 was filed by the petitioner and others in which a prayer for injuncting the respondent-Railways from wrongfully infringing the petitioners' right to hold the property as also to remove the encroachment made thereover was made. The subject land was part of the subject matter of the aforesaid writ petition. On a consideration of the case of the parties, the said writ petition was disposed of by the following order on 24.07.2012:-

“After some argument, Mr. J.S. Arora, learned counsel appearing for the petitioner seeks permission to withdraw the writ application to ventilate his grievance before the appropriate forum.

The writ application thus stands dismissed as withdrawn.”

The petitioner, subsequently, made a complaint before the higher executive authority. An information was also sought by him from the respondent-Railways. By a communication dated 30th December, 2014 the information was supplied to the petitioner from the office of the Additional Divisional Railway Manager, ECR wherein it was informed that the land is partially under the Railways as per the Railway map. The Railways land is up to 88 ft from the centre of the track as shown in the railway line diagram. Relying heavily on the said information given to the petitioner in 2014, the present writ petition is filed in 2016 with the prayer noticed hereinabove.

Mr. Choubey has submitted that from the said information, provided to the petitioner, it shall appear that part of the land is in possession of the Railways. The remaining part of the land of the petitioner has now become an island as it has no access. It is bounded on all sides by the land of the Railways. The previous writ petition was filed for removal of encroachment whereas the present writ petition is filed for directing the respondents to acquire the remaining land and pay compensation and/or for providing access to the left out part of the land of the petitioner.



Mr. Keshari appearing for the respondent Railways, opposing the writ petition, has submitted that earlier the writ petition was filed for removal of encroachment made by the Railways. Naturally, the petitioner claimed right, title and possession over the land. Having regard to the nature of relief, the relevant pleadings and the constraints of the writ Court, the said writ petition was sought to be withdrawn enabling the petitioners to ventilate their grievance before the appropriate forum. In his submission, considering the diverse disputed facts of the case, the Forum available to him was to seek appropriate declaration from the Court of competent civil jurisdiction. Even otherwise, it does not appear from the writ petition that the petitioner had ever ventilated his grievance before the competent authority of the respondent-Railways which was considered and declined. Without doing so the present application is filed which is not maintainable in law.

The counsel for the respondent nos. 4 and 5 supporting the contention of the Mr. Keshari has submitted that the acquisition in the present case for the respondent-Railways was made sometimes in 1928-30. The respondent HPCL set up the depot at Bihta on the land provided by the State for which the Railway track/corridor was provided by the respondent -Railways. The Project was over in 2013. Several decades after such acquisition made by the Railways, the litigation of the present nature is being raised by the petitioner which merits to be disallowed.

The counsel for the State, has also opposed the writ petition.

On a consideration of the relevant materials on record, it appears that on the basis of the information supplied by the respondent Railways (Annexure-6) it has been submitted that foundational facts have been admitted by the respondent-Railways. Only up to 88 ft from the centre of the track was the land acquired by the State for the Railways. The Railways are, however, in

possession in excess of the acquired land. I am unable to find from the said communication that any admission with regard to the title of the petitioner over the land has been made or encroachment by the Railways on the land of the petitioner is admitted. The Court is also unable to read from the said document that the remaining land of the petitioner in plot nos. 96 and 97 are actually blocked on all sides. In other words, the subject land has no access. These are the disputed facts which require to be appreciated upon production of relevant convincing evidence/material. It would be difficult for the writ Court to delve into these aspects of the matter. Perhaps, for these reasons, the prayer made in the earlier writ petition was declined by the Court.

In my considered view, it shall be wholly inappropriate for this Court to invoke its discretionary writ jurisdiction and grant the relief as prayed in the writ application. If the land of the petitioner has no access, the petitioner can always knock the door of the appropriate authority/forum for enforcing his right of easement. To grant the relief, the Court would necessarily require to accept the title of the petitioner over the land which in view of the earlier order passed by this Court on the writ petition would not be gone into.

The writ application lacks merit. Dismissed.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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