

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14143 of 2013

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1. Lal Muni Devi Wife Of Sri Birendra Pratap Singh Resident Of Village And Post - Haradiya, Police Station - Jagdishpur, District - Bhojpur
 2. Manju Singh Wife Of Sri Lallu Singh Resident Of Village And Post - Haradiya, Police Station - Jagdishpur, District - Bhojpur.

.... Petitioner/s

Versus

1. Chairman National Highway Authority Of India , 5a, 6 Sector -10, Dwarika, New Delhi - 75
2. The Project Director, Project Implementation Unit Patna 63 (D), Srikrishnapurim Near Basawan Park, Patna
3. Manager Technical, 63 (D), Sri Krishnapuri, Near Basawan Park, Patna
4. Executive Engineer, N.H. Road, Patna Office At Ara Bihari Mill Road, Ara, Police Station - Arrah Nawada, District - Bhojpur
5. Awar Pramandal Padadhikari, National Highway Awar Pramandal, Ara Bihari Mill Road, Ara, Police Station - Arrah Nawada, District - Bhojpur
6. State Of Bihar, Through Collector, Bhojpur, Ara
7. Babu Jagjivan Ram National Foundation, K.G. Marg, New Delhi .

.... Respondent/s

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Appearance :

For the Petitioner/s : MR. RAJENDRA NARAIN, SR. ADV & MR. MAKARDHWAJ UPADHYAY, ADV
For the NHAI : MR. SHRI NATH PATHAK, ADV
For the State : MR. SANJAY KUMAR AC TO GP-3

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-11-2016

Heard Mr.Rajendra Narain, learned senior counsel for the petitioners and learned counsel for the respondents.

The present application has been filed under Article 227 of the Constitution of India questioning the legal sustainability of



the impugned orders passed by the trial court as well as the appellate court refusing the prayer for injunction made by the plaintiff-petitioners.

The plaintiff-petitioners filed a suit praying for permanent injunction and for declaration that raising of boundary wall by the defendants obstructing the right of way of the plaintiffs was entirely illegal and further relief was prayed for declaration of the plaintiffs right of user over the suit property. There is no dispute of the fact that the suit land belongs to the respondents. However, the plaintiffs have made averments under the plaint regarding purchase of the adjacent lands out of which Bhookhund nos. 3 and 4 have been claimed by the plaintiffs to have been purchased. Sketch map has been given in the plaint, a copy of which has been brought on record by way of annexure to the supplementary affidavit in order to clarify location and position of the land as purchased by the plaintiffs as well as the suit land. It was the case of the plaintiffs that the defendants by constructing boundary wall adjacent to the western boundary wall of the plaintiffs wanted to install the statue of a national leader which would permanently obstruct the right of way of the plaintiffs making the purchased land of the plaintiffs as land-locked. The plaintiff's petition for injunction, however, has been rejected by both the courts below arriving at concurrent finding that



the plaintiffs have got no prima facie case and the balance of convenience also does not lie for grant of injunction as prayed by the plaintiffs.

Mr. Narayan, learned senior counsel for the petitioners has submitted that both the courts below have committed error in misconstruing the factual position of the land of the plaintiffs and have wrongly come to the conclusion that the plaintiffs have got right of way in the western side of the purchased land. It has been emphasized that the plaintiffs have got the only way for ingress and outgress over their purchased land from western side and if such way is obstructed the plaintiffs purchased land i.e. bhokhand nos. 3 and 4 would clearly become land-locked. Learned senior counsel for the petitioners has placed in detail the order passed by the court below in order to persuade this Court to take the view that the issues of fact have been wrongly determined by both the courts below.

Learned counsel for the respondents, however, has supported the impugned order and has further submitted that the suit filed by the plaintiff is not maintainable in view of the bar created by the statutes. It has also been submitted that the construction and installation of the statue have been completed by the respondents.

After considering the submissions and perusal of the materials on record, it transpires that both the courts below have



recorded the finding of fact after scrutiny of evidence on record which were acceptable and could have been relied upon. Even otherwise also in paragraph nos. 7 and 8 of the plaint there is averment by the plaintiffs themselves that in the northern and western side of their land pakka boundary wall has been constructed. The said fact has also been taken into notice by the courts below. No averment in the plaint could be pointed out to show that there is/was any gate or door left by the plaintiffs in their said boundary wall in the western side for ingress or egress. The trial court has referred to the report of the pleader commissioner with regard to the point no. 4 in order to conclude that there is no door yet built by the plaintiffs in the western side. As the concurrent findings of fact have been recorded by both the courts below after scrutiny of evidence, this Court is not inclined to invoke its jurisdiction under Article 227 of the constitution of India, in view of the principles in this regard laid down by the Apex Court in the case of ***The Managing Director (MIG) Hindustan Aeronautics Ltd. vs Ajit Prasad Tarway AIR 1973 S.C. 76.***

The application is, accordingly, dismissed.

However, in view of the nature of the dispute between the parties, this Court finds it just and proper that the suit filed by the plaintiffs itself be disposed of at the earliest.



Learned counsel for the parties have expressed their agreement for expeditious disposal of the suit and agree to co-operate in the same.

In the facts and circumstances of the case, leaned court below is directed to take up the proceeding of the suit at the earliest and dispose it of within a period of six months from the date of receipt/production of a copy of this order. The parties are directed to co-operate in the disposal of the suit within the aforesaid time frame.

(V. Nath, J)

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