

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.246 of 2011

IN

Civil Writ Jurisdiction Case No. 15071 of 2010

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Sri Goshwami Tulsi Pushtakalay, Bihta, Patna through its Secretary Sri Yogendra Singh, son of Late Nawal Kishore Singh, resident of Village + P.S. Bihta, District Patna

.... Appellant/s

Versus

1. The State of Bihar through its Commissioner-cum-Secretary, Department of Revenue, Govt. of Bihar, Patna
 2. The District Magistrate cum Collector, Patna
 3. The Sub-Divisional Officer, Danapur, District Patna
 4. The Deputy Collector Land Reforms, Danapur, District Patna
 5. The Anchaladhikari, Bihta Block, Bihta, District Patna
 6. Bhola Sao, son of Late Deo Sharan Sao
 7. Shanti Devi, wife of Bhola Sao
 8. Phulpatia Devi, wife of Late Ramji Sao.
- All 6 to 8 resident of Village+ P.S. Bihta, District Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Rajesh Kumar, Advocate

For the Respondent/s : Mr. T.N. Matin, Sr. Advocate
Mr. Niraj Kumar, Advocate

For the State : Mr. Shiv Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 20-10-2016

Heard Sri Chittaranjan Sinha, learned Senior Counsel in support of this intra-court appeal, Sri T.N. Matin, learned Senior Counsel appearing on behalf of Respondent No. 7 and learned counsel for the State.

The appellant in this intra-court appeal was the unsuccessful writ petitioner. By the writ petition he had challenged



initiation of the entire proceedings being Case No. 10/1995-96 and various orders passed therein whereby steps were taken to make settlement of land in favour of Respondent Nos. 7 and 8 which land was in occupation of the writ petitioner. Learned Single Judge dismissed the writ petition holding that the writ petitioner was not able to produce any official document to show that the land was settled to him by the State. Being aggrieved by the said order of dismissal the present intra-court appeal has been filed.

Sri Chittaranjan Sinha, learned Senior Counsel in support of the appeal and in support of the writ petition has brought to our notice certain facts which are relevant. In or around 1953 the then landlord (Jamindar) made settlement of about 27 decimals of land for establishing a public library known as Sri Goswami Tulsi Pustakalaya. Even after vesting of Jamindari by virtue of Bihar Land Reforms Act, the entire 27 decimals of land continued in possession of the said public library. In order to augment its income for maintaining and running the said public library, certain portions therein were rented out by the management of the said public library to private persons from time to time. On record documents clearly show that even State funds were made available from time to time to this public library. From these facts, it is clear that right from 1953 this property of 27 decimals was treated by everybody as belonging



to the public library. State also recognized the same though no formal settlement was made in favour of said library which existed even prior to vesting of Jamindari. It appears one small part of the land upon application by Bhola Sao, the husband of Respondent No. 7 was rented out to him for establishing *kolhu* (oil mill). He was paying rent to the writ petitioner. Upon his default in paying rent an eviction suit was filed by the management of the writ petitioner. Notwithstanding he, as a tenant and was inducted as a tenant and paying rent, he took strange plea in the court, challenging the ownership for the right of the management over the property in question, notwithstanding Section 116 of the Evidence Act. However, the court below decreed the suit and ordered for eviction of said Bhola Sao, the husband of Respondent No. 7. In between, Respondent No. 7 being the wife of Bhola Sao made an application to the Circle Officer, Bihta for settlement of that very piece of land with her. This was rejected. Thereafter when Bhola Sao was not vacating the premises, notwithstanding the decree, the decree was put in execution in which she turned up and filed an application in terms of Order 21 Rule 96 objecting to the execution proceedings. Bhola Sao has filed an appeal against the judgment and decree of eviction. It may also be noted here that Bhola Sao manufactured a document to show settlement in his favour in order to get electric



connection in his own name. The document was made available by the Circle Officer. When these facts came to the knowledge of the writ petitioner, they initiated a criminal proceeding in which Bhola Sao and the Circle Officer including Respondent No. 7 Shanti Devi were convicted. The Circle Officer is facing departmental proceeding as well. Notwithstanding this, Respondent No. 7 then made an application to the Circle Officer for settlement of the said land ostensibly pleading that the land was State land and not in occupation of any person and, as such, it could be settled. Upon this application, Case No. 10/1995-96 was initiated wherein ultimately settlement order has been made in favour of Respondent No. 7 for the land in which her husband had entered as tenant of the public library. It is this action of the State that was challenged in the writ proceedings.

Mr. Chittaranjan Sinha, learned Senior Counsel submits that admittedly and undisputedly the writ petitioner is a public library being run out of public funds and public contributions. It has been in possession of 27 decimals of land since 1953. To augment its income to maintain the library certain parts of land in its occupation were rented out including those to the husband of Respondent No. 7. Respondent No. 7 or her husband have not explained how they initially came in possession of the land. All they



have been challenging is that the writ petitioner public library has no right title or interest in the land. No where Respondent No. 7 or her husband has shown as to how they initially came in possession of the land. Once they tried to establish the same on basis of court order, which was, as noted above, found to be rank forgery for which they have been convicted.

On the other hand, Sri Matin, learned Senior Counsel appearing for Respondent No. 7 submits that before the writ petitioner could seek relief before this Court it must establish its right. The writ petitioner having no document to establish its right, the writ petition was rightly dismissed. Thus, the issue is what are the rights of the writ petitioner.

As we have noticed above, the facts remain uncontrovered that in 1953, 27 decimals of land was given for establishing a public library. It is not a private trust or a private library or a private property of a private individual. It is a public library funded by the public including the Government. The very fact that Government funding has been there, itself shows that they have been in possession, to the knowledge of everybody, including the Government. As noted above, to augment its income it had let out certain portions of land to various persons including the husband of Respondent No. 7. Having entered upon the premises as a tenant

of the public library they now become the owner thereof. That cannot be permitted.

As noted above, Respondent No. 7 had earlier made an application for settlement, but noticing the facts, the same was rejected by the State. Merely because officers changed, she again made an application in respect of the same very premises and this time it has been granted. How she came in possession, she is not in a position to explain. How her husband has come in possession he is not able to explain. Matter, thus, stands clear that the possession of the public library over piece of land cannot be disputed. That being so, in order to make settlement with Respondent No. 7, the authorities first were required to legally dispossess the petitioner, public library. There were no such proceedings. Straightway properties, which were in possession of the writ petitioner for decades, same portion tenanted to Respondent No. 7, who, as stated above, has deceitfully sought settlement.

In view of the above, it is clear that the proceedings as initiated, are proceedings not in bona fide. The Respondent No. 7 having no right of peaceful continuous possession as the writ petitioner, which was a public library and that too in such a deceitful manner, we would, therefore, set aside the order of the learned Single Judge, set aside the proceedings in case No. 10/1995-

96 as initiated by Anchaladhikari (Circle Officer), Bihta, District Patna and orders passed therein and allow the writ petition.

With the aforesaid observations and directions the appeal stands allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

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