

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2090 of 2014

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Manjar Arfi Khan

.... Petitioner/s

Versus

Bakhtiyar Hussain & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ray Saurabh Nath

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 06-01-2016

Heard the learned senior counsel, Mr. Ray Shivaji Nath
on behalf of the petitioner.

The plaintiff-petitioner has filed this application under
Article 227 of the Constitution of India against the order dated
04.06.2013 and 10.09.2013 passed by the learned Subordinate
Judge II, Gaya in Title Suit No.33 of 2013.

It appears that the plaintiff-petitioner filed the aforesaid
Title Suit No.33 of 2013 for declaration of title and for permanent
injunction restraining the defendant from dispossessing the
plaintiff from the suit property. Subsequently, application for
injunction was filed and interim order was passed to maintain
status quo. Thereafter, application was filed by the plaintiff before
the Court below that after passing status quo order, the defendants
have demolished the suit building where the plaintiff was running
a Dhaba. The Court below by the impugned order, rejected the



application on the ground that the question as to whether the building has been demolished by the defendant after passing of order of status quo or it was demolished prior to passing of status quo order is a matter of enquiry. The Court below also observed that it is a matter of enquiry as to whether the defendant had the knowledge of the status quo order or not. After recording this finding, the Court below held that the petitioner may pray for mandatory injunction and rejected the application for restoration of original condition of the Dhaba.

The learned senior counsel submitted that in fact, Pleader Commissioner was appointed by the Court who submitted report to the effect that the Dhaba has been demolished by the defendant about 18 days ago and, therefore, the Court below should have acted on the report of the Pleader Commissioner.

So far the submission of the learned senior counsel is concerned, the Pleader Commissioner's report is only an evidence and so far the finding of the Pleader Commissioner that in fact, the defendants demolished the Dhaba after passing of status quo order is concerned, in my opinion, the Pleader Commissioner cannot give such finding as the Court itself has no jurisdiction to delegate power to the Pleader Commissioner for giving such finding because the Court is required to give the finding as to whether the

demolition was done by the defendant that too after the passing of the status quo order. The Pleader Commissioner is supposed to give the report with regard to the status of the building only.

In view of the above facts and circumstances of the case, the petitioner may approach the Court below for enquiry and after enquiry, if the Court below will find that in fact, after status quo, the same has been demolished by the defendant, the Court below may pass appropriate order according to law.

With this observation, this writ application is hereby disposed of.

(Mungeshwar Sahoo, J)

Saurabh/-

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