

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6979 of 2016

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1. Council of Allama Iqbal College & Allied Institutions, Bihar Sharif, (Nalanda), through its Secretary, Shah Javedy, Son of Abdul Wadood, R/O Village + P.O. and P.S.- Bihar Sharif, District- Nalanda.
 2. Allama Iqbal College, Bihar Sharif, Nalanda, through its Secretary, Shah Jawedy, Son of Abdul Wadood, R/o Village + P.O. and P.S.- Bihar Sharif, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate, Nalanda at Bihar Sharif.
5. The Sub-Divisional Officer, Bihar Sharif.
6. The Additional Collector, Nalanda at Bihar Sharif.
7. The Deputy Collector Land Reforms, Bihar Sharif, Nalanda.
8. The Circle Officer, Bihar Sharif, Nalanda.
9. The Municipal Commissioner, Municipal Corporation, Bihar Sharif, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Priyadarshi and
Mr. Ajay Kumar Singh, Advocates

For the Bihar Sharif
Municipal Corporation : Mr. Gyan Prakash Ojha, Advocate

For the State : Mr. Rakesh Prabhat, A.C. to S.C. 21

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 15-02-2017

Heard learned counsel for the petitioners, State and
the respondent no. 9.

2. The petitioners have moved the Court for quashing
the order passed by respondent no. 2 dated 29.05.2014 contained in
Memo No. 387(6), by which the request of the petitioners for
settlement of 2.70 acres of lands in Mauza-Rampur, Baignabad under



Biharsharif Circle appertaining to Thana No. 110, Khata No. 168 and Plot No. 1191, has been rejected.

3. Learned counsel for the petitioners submitted that they had applied for land to the college as the number of students was high, requiring further space, for which the adjacent land belonging to the Government was requested to be settled. He submitted that in the year 1991, the request was made but finally, by the impugned order, the same was refused. Learned counsel has drawn the attention of the Court to the reports of the Circle Officer, Sub Divisional Magistrate as well as the District Magistrate, who have all given a finding in favour of the petitioners and have recommended for such settlement, after completing all the due formalities i.e., of actual verification of the land, giving public notice and calling for objection. Learned counsel submitted that in the original *Khatiyan*, the land is described as '*Gairmazarua Aam Paine*' but due to passage of time, since long back, the land has been filled up and is now plain land not being used for any *Sairat* purposes, and in fact on a portion of the land, there is also a structure of the college and the report also indicates that the open land is used for students of the college for educational purposes.

4. Learned counsel pointed out that the basis on which the impugned order has been passed rejecting the request of the petitioners, was that the description of the land is '*Gairmazarua*



Aam Kism Paine’, which is totally against the consistent reports of the local authorities, right from the year 1992 itself. Learned counsel further pointed out that though in the year 1992 and thereafter, the entire procedure of calling for objections had been completed but in the impugned order, there is reference to some objections in the years 2010 and 2013, which stands falsified from the fact that it is stated that few villagers had objected that it was a common passage. Thus, if that plea is accepted that it was a common passage then automatically the plea that it was ‘*Gairmazarua Aam Kism Paine*’ gets falsified as a *Paine*, being a water area, can never be a common passage. He further submitted that the conduct of the respondents of keeping the matter pending since 1992 and finally deciding in the year 2014, and that too, after intervention of the Court earlier through order dated 04.10.2013 in C.W.J.C. No. 16191 of 2013, is unreasonable and arbitrary. Learned counsel submitted that the area in question was already demarcated by a boundary wall and used by the students of the college, which was never objected to, either by the authorities or the people of the locality and in fact, as late as 05.02.2016, the District Magistrate, Nalanda has directed the Sub Divisional Officer to get the boundary wall repaired so as to prevent use of unfair means in the Intermediate and Matric examinations, which clearly establishes that the land is neither *Sariat* nor used by the persons of the locality for passage and further, that till date, no



unpleasant situation has arisen there. Learned counsel submitted that in the town of Biharsharif, two other colleges by the name of Sardar Patel Memorial College and Dayanand Kanya Vidyalaya had also requested the Government for settlement of land, which has been allowed by the State Government, but in the present case, there is discrimination by the authorities. Learned counsel submitted that the authorities were required to act upon the request of the petitioners which was made in the year 1992 itself and reports were also obtained from the District Authorities as well as the Municipal Corporation long time back, but due to fault, delay and laches on the part of the authorities themselves, by not taking a decision at the appropriate time, for such inaction, which is not attributable to the petitioners, the cause and right of the petitioners cannot be made to suffer. For such proposition reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Kusheshwar Prasad Singh v. State of Bihar** reported as (2007) 11 SCC 447 as also a decision of a co-ordinate Bench of this Court in the case of **Santosh Kumar vs. State of Bihar** reported as 2017(1) PLJR 46.

5. Learned counsel for the State submitted that the order mentions about there being objection by the local villagers.

6. From the facts which are on record, at least this much is clear that the consideration in the order impugned is totally erroneous, as it is far removed from the factual position on the



ground, which is reflected from the various reports of the District Authorities, including that of the District Magistrate. Moreover, the so called objection by the villagers is also a weak plea to deny the settlement for the reason that there is also an allegation that there has been a boundary wall and encroachment which has been asked to be removed, meaning thereby that the area/land in question is already enclosed by a boundary wall and still the villagers are managing to have ingress and egress points, which clearly indicates that the land which is requested to be settled, if settled with the college, would not cause any inconvenience, since, as alleged, the area has already been enclosed by a boundary, which has till date not created any problem for the District administration/authorities. However, this is not a conclusive finding and only the tentative view of the Court, based on the materials on record. It also appears that even the Municipal Corporation, Biharsharif had given its No Objection for settlement of the land in question with the petitioners stating that the same was already in its use.

7. The Court would like to observe here that the present is a glaring example where a genuine cause is frustrated due to the authorities keeping the matter pending for almost 23 years, when in 1992-93 itself all formalities had been completed, including No Objection from the Municipal Corporation, No Objection from the locals and the matter also recommended by the District



Magistrate, and still the State Government not taking a decision and only in the year 2014, on a so called objection from the locals in 2010 and 2013, it is the State which has allowed matters to linger and, in fact, it has allowed objections to come up, which may well be by design and even engineered. The State has also compromised its responsibility of judging the objection objectively. From the impugned order it appears that the objection has been given weightage without there being any report with regard to such objection and without considering the reports/recommendations of the District Authorities and the Municipality in favour of the college.

8. A counter affidavit on behalf of respondents no. 4 and 8 is on record in which the ground taken is that the land in question is on the *Sairat* register of the *Anchal* and recorded as '*Gairmazarua Aam Paine*'. The Court would only comment on the naivety of the concerned respondents in taking such stand when even in the report of the local authorities, it is admitted that in the official records, the description was '*Gairmazarua Aam Paine*' but since long back, the nature has changed. Thus, in the counter affidavit reliance being placed on the same record, which has already been referred to and dealt by the authorities, is absolutely of no value as far as the present issue is concerned and is clear indication of total lack of application of mind in passing of the order impugned.

9. Be that as it may, a fair stand has been taken on



behalf of the respondents by their learned counsel, who submitted that the matter requires fresh consideration by the authorities for which the matter be remanded.

10. Learned counsel for the petitioners agrees to such proposition.

11. In view of the aforesaid, the impugned order is set aside and the matter is remitted to the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna to reconsider the matter in accordance with law and objectively, taking into account all facts and reports/recommendations of the District authorities and the Municipality, made earlier. The petitioners shall also be given an opportunity to place all materials available with them and also an opportunity of hearing before a final decision is taken by the respondent no. 2. The exercise shall be completed within a period of three months from the date of production of a copy of the order before the respondent no. 2.

12. The Court would only observe that the cause of the petitioners cannot suffer purely on the ground that, as of today, the situation may have become prejudicial to their interest, for the reason that for no fault or laches on their part, the matter was kept pending for almost 23 years. Further, it is a settled principle of law that if a person has moved the authorities in any matter and nothing remained to be done on his part, the authorities cannot refuse the



relief/claim on the ground that even though there may be no fault or laches on the part of the person concerned, but because of fault, laches and delay on the part of the authorities concerned themselves, such relief/claim shall not be granted.

13. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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