

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.626 of 2016

In
Civil Writ Jurisdiction Case No.8811 of 2015

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Jagranath Prasad Gupta Owner of Mishri Maveshi Hat S/o Late Munshi Sah
Resident of village - Birouli, P.S. Rupouli, District - Purnea

... .. Appellant/s

Versus

1. The State of Bihar through District Magistrate, Purnia, District Purnea
2. The Divisional Commissioner, Purnia, District - Purnea
3. The District Magistrate, Purnia, District - Purnea
4. The Sub - Divisional officer, Dhamdaha, Purnia, District - Purnea
5. The Circle officer, Rupouli, Purnia, District - Purnea
6. Md. Fazale Ali @ Rijawi Son of Late Jaki Ahmad Resident of village + P.O.
Chaphari, P.S. Rajouli, District - Purnea

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P. K. Shahi Sr. Advocate Mr. Mrigank Mauli Advocate Mr. Siddhartha Prasad Advocate Mr. Kaustubh Advocate Mr. Ohm Prakash Kumar Advocate Mr. Ashish Kumar Advocate Mr. Sumit Kumar Advocate
For the Respondent/s	:	Mr. Pankaj Kumar SC-12
For the Respondent No. 6:	:	Mr. Raghib Ahsan Sr. Advocate Mr. Sanshay Srivastava Advocate Mr. Saurav Suman Advocate Mr. Asuf Kalim Advocate Mr. Binod Kumar Sinha Advocate Mr. Md. Shahab Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 01-12-2017

Heard learned senior counsel, representing the appellant as well as learned senior counsel, representing Respondent No. 6 in the present Letters Patent Appeal.

The Respondent No. 6 in the present appeal happened to be the original writ petitioner, who questioned the order, dated 20.05.2015, passed by the Divisional Commissioner, Purnea (Respondent No. 2) in Misc. Appeal No. 51 of 2015, by which he had upheld the order, dated 10.02.2015, passed by the District Magistrate, Purnea (Respondent No. 3). The District Magistrate, Purnea, vide his letter no. 445, dated 10.02.2015, allowed the Respondent No.7-Appellant to hold his cattle-fair (*Hat*) on Tuesday every week, whereas, the petitioner-Respondent No. 6 was directed to hold it on Friday every week.

In course of argument before the Learned Single Judge, the basic contention of the writ petitioner-Respondent No. 6, was that if he is holding a “*Hat*” on his private raiyati land, then neither the Respondent No. 7–Appellant nor the State authorities have any right to regulate holding of the “*Hat*” by the writ petitioner on his private land.

Some past history showing that in earlier times also the parties hereto, had been agitating certain issues against each other



were pleaded only to contend that after repeal of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the 'Act' in short), even that dispute has lost its relevance. The contention is that by virtue of the repeal Act now, the State and its authorities have no regulatory power with regard to holding of fairs (*Hats*) on a private piece of land. The parties also dwelt upon the issue as to whether the District Magistrate while passing the impugned order has shown any law and order issue being the basis for the same, what has finally transpired on adjudication by the Learned Single Judge is that the State authorities have not shown any law and order problem so as to give them any reason to interfere with the days and timings with respect to the holding of the "*Hat*".

In ultimate analysis the Learned Single Judge while taking note of the submission of the learned counsel for the writ petitioner that he had no objection to the holding of the "*Hat*" by Respondent No. 7–Appellant on 'Tuesday', set aside the impugned orders and issued certain directions to the district administration to ensure that petitioner–Respondent No. 6 is not prevented from holding the "*Hat*" on Tuesday every week on his raiyati land. What had been noticed as a matter of fact by the Learned Single Judge and is not in dispute between the parties is that the writ petitioner –



Respondent No. 6 and the Respondent 7- appellant are holding their respective “*Hats*” at a distance of 4 Kms. from each-other and in fact the “*Hats*” are not situated in the same and one village, therefore, there should not have been any difficulty in holding that both the parties were within their Constitutional Rights to hold the “*Hats*” on their respective piece of land.

In the appeal before us it is contended that the claim of the writ petitioner that he is holding the “*Hat*” on his own raiyati land is not correct. Issues have been attempted to be raised with respect to the owner-ship of the land of Respondent No. 6.

Learned senior counsel representing the Appellant further submits that the District Magistrate, Purnea has rightly interfered with the issue by fixing two different day for holding the “*Hat*” by the petitioner as well as Respondent No. 7 of the writ application and no illegality or infirmity may be found with the same. Learned senior counsel, however, does not dispute the fact that the two “*Hats*” are situated at the distance of 4 kms. and have otherwise no interference with each other. However, learned senior counsel has contended that the impugned order passed by the District Magistrate and the Divisional Commissioner do take care of law and order issue and what has been decided by them has a reason reflected in the order. The order passed by the Learned Single



Judge has been assailed on these grounds by Respondent No. 7-Appellant.

On the other hand, the learned senior counsel representing the original writ petitioner-Respondent No. 6 in the present appeal submits that the factual position as stated in the order passed by the Learned Single Judge is not in dispute. The simple issue involved in the present writ application–appeal is as to whether the District Magistrate or the Divisional Commissioner is justified in fixing two different dates for the writ petitioner and Respondent No. 7 for holding the “*Hat*” even though both the parties are holding their respective “*Hats*” at two different places at a distance of 4 kms. and on their raiyati land.

The learned senior counsel submits that the submission on behalf of the Appellant that Respondent No. 6 is not holding the “*Hat*” on his raiyati land is not a correct submission. He, further, submits that there is no issue involved with respect to ownership of the land and this is being raised just to create a clog on the right of Respondent No. 6. Learned senior counsel representing Respondent No. 6 further submits that by no reason the Respondent No. 7–Appellant can deprive the present Respondent No. 6 with the help of State authorities in holding the cattle-fair on Tuesday on his own raiyati land. He further submits that what has



been held by the Learned Single Judge that it is a Constitutional Right of the writ petitioner–Respondent No. 6 is a correct laying down of the law and need not be interfered with.

We have considered the rival submissions made at the bar and perused the impugned order passed by the Learned Single Judge. The facts are not in dispute. Both the parties are holding the “*Hats*” at a distance of 4 kms. The Respondent No. 7-appellant wants that while he should be allowed to hold “Hat” on Tuesday, the petitioner-Respondent No. 6 should be directed to hold the “Hat” on any other day but not on “Tuesday”. Till date there is no reported incidence of any violence and no specific instance has been provided in the impugned order to give rise to a prima facie view that there is any law and order issue. The impugned order only vaguely says that the SDO in his report has raised an apprehension of a law and order issue. No basis thereof has been indicated in the impugned order.

The legal position as existing today is that after coming into force of the Repeal Act, the District Magistrate or for that reason the Divisional Commissioner, Purnea, cannot usurp any power to take upon themselves a jurisdiction to regulate the cattle-fair on the private land. No such law has been placed before us even at this stage. The Respondent No. 6 has been allowed to hold “*Hat*”



on Tuesday, the writ petitioner has no objection to the same. If one party has no objection to holding of the “*Hat*” by the other party, this Court cannot appreciate as to how the other party can have any objection with respect to holding of the “*Hat*” by the another party. The Constitution of India provides equality before law and if both the parties are holding their “*Hat*” on Tuesday itself at a distance of 4 kms., this Court is unable to understand as to why the District Magistrate will restrict one party to hold it on any other day, that too in absence of any regulatory law or any reason showing even a prima facie case of a law and order issue.

We do not find any illegality or infirmity in the order passed by the Learned Single Judge. The appeal has no merit, it is, accordingly, dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

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