

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9202 of 2016

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1. Shivpujan Prasad S/o Late Arjun Prasad
2. Dharendra Kumar Pandey S/o Shri Indra Deo Pandey
3. Resalat Khan S/o Sharafat Hussain
4. Indu Kumari D/o Kedar Nath Singh
5. Vijay Kumar Singh S/o Late Haridwar Singh
6. Krishna Kumar Prasad S/o Late Hari Prasad
7. Urmila Kunwar @ Urmila Devi W/o Late Triloki Saw
8. Jitendra Seth S/o Yugeshwar Seth
9. Keeran Kumar Singh S/o Bavan Singh
10. Md. Ahasan Azad S/o Late Rajabu Miya All residents of Mohalla - Anaith,
Choti Lane Colony, P.S. Ara Nawada, Distt - Bhojpur, Ara.

.... Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar.
2. The Collector-Cum-District Magistrate , Bhojpur, Ara.
3. The Superintendent of Police, Bhojpur, Ara.
4. S.D.M. Sadar, Ara, District Bhojpur at Ara.
5. Inspector of Police, Ara Circle, District Bhojpur at Ara.
6. Officer-In-Charge, Ara Nawada Police Station, Distt - Bhojpur.
7. Ara Sasaram Light Railway Company Limited having registered office at 9, Lal
Bazar Street, Kolkata (in voluntary liquidation) through its Power of Attorney
Holder Krishna Singh, Son of Sri Ram Ratan Singh resident of B - 143, Budha
Colony, Patna - 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kalyan Shankar,
Mr. Chandan Kumar, Advocates
For Respondent nos.1 to 6: Mr. AAG -9
For Respondent nos.7 : Mr. Rajendra Narayan, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 24-03-2017

Heard Mr. Kalyan Shankar, learned Counsel for the
petitioners, Mr. AAG 9, for respondent nos. 1 to 6 and Mr. Rajendra
Narayan, learned Senior Advocate for respondent no.7 (Ara-
Sasaram Light Railway Company Limited).



I.A. No. 4726 of 2016

I.A. No. 4726 of 2016 has been preferred on behalf of Krishna Singh, son of Sri Ram Ratan Singh, Power of Attorney holder of the Official Liquidator of Ara Sasaram Light Railway Company Ltd., for being impleaded as intervenor-respondent.

Since Ara Sasaram Light Railway Company Limited having its registered office at 9, Lal Bazar Street, Kolkata (in voluntary liquidation), through its Power of Attorney holder Krishna Singh son of Sri Ram Ratan Singh, is already respondent no. 7 in the present writ application, hence, Mr. Rajendra Narain, learned Senior Counsel appearing for the proposed intervenor respondent is not pressing this interlocutory application.

Hence, I.A. No. 4726 of 2016 is dismissed as not pressed.

The present writ application has been filed seeking the following reliefs:

“1. That the petitioners (by) way of this writ application seek indulgence of this Hon’ble Court for the issuance of Writ/Writs, Order/Orders, direction/directions in the following relief being sought for:-

(i) To stay the operation of Memo No. 448 dated 29.3.2016, whereby and whereunder the Sub-Divisional Officer, Sadar- Ara, has directed to demolish the houses



of the petitioners in the name of removing encroachment.

(ii) To stay the operation of the direction of the Circle Officer, Ara who has directed Inspector of Police through memo no. 1944 dated 6.5.2016 to enquire into the matter.

(iii) To direct the respondents not to interfere with the peaceful cohabitation of the petitioner on a piece of land which was allotted to them by the Ara-Sasaram Light Railway Company Limited. A Company registered under the Indian Company Act.

(iv) To direct the respondents, restraining them from uprooting the petitioners from their only shelter under the sun.

(v) To direct the respondents, restraining them from bulldozing the houses of petitioner and eventually making them homeless.

(vi) To direct the respondent No. 7 to settle the land on which the houses of the petitioners have been built in the name of the respective occupants.

(vii) To stay the operation of order dated-21.11.2014, passed in C.W.J.C. No. 13599 of 2012 whereby and whereunder this Hon'ble Court has directed to provide the appropriate security to the petitioner/company and dispose of the representation of the Company in respect of land mentioned in Annexure-10 to the C.W.J.C. No. 13599 of 2012.”

The learned counsel for the petitioners, however,



confines his prayer only to the extent of quashing of Memo no. 448 dated 29.3.2016 (Annexure 1), whereby, a direction was issued to demolish the houses of the petitioners in the guise of removing encroachment. However, learned Counsel for the petitioner has prayed for deleting the prayer made in paragraph 1 (vii) of the petition for staying the operation of order dated 21.11.2014 passed in C.W.J.C. No. 13599 of 2012.

Prayer of the learned counsel for the petitioner, to the above extent, is allowed. Hence, in the present writ application, the limited question is – (i) whether the order of the Sub-Divisional Officer, Sadar- Ara, whereby, direction has been issued to demolish the residential houses of the petitioners is sustainable ? (ii) whether this court can issue any mandamus in view of the winding up order being passed by the Company Court of Calcutta High Court in Company Petition No. 623 of 1977 ? and (iii) whether the petitioner's writ application with regard to the property which is the subject matter of liquidation and especially in view of the fact that Company Petition No. 623 of 1977 is pending in that regard, is maintainable before this Court ?

The factual matrix of the case would unveil that Ara-Sasaram Light Railway Company Ltd. (hereinafter referred to as the 'Company') was being managed by Martin Burn Ltd. (hereinafter



referred to as 'Martin Railway'). In pursuance to a tripartite agreement between the Central Government, District Board of Shahabad and Martin Railway, Martin Railway started its operation of running light rail coaches in between Ara and Sasaram. Martin Railway operated successfully for more than sixty years. In the year 1977, the Company resolved to wind up the business and accordingly passed a resolution of winding up and obtained the order of winding up from Company Court of Calcutta High Court in Company Petition No. 623 of 1977. Consequently, the Official Liquidator was appointed with express objective of disposing of the assets and movable and immovable properties of the Company and to pay off the creditors from the usufructs thereof. One Kedar Nath Fatehpuria was appointed as Official Liquidator of the Company. The respondent no. 7 claims to be the Power of Attorney holder of the Official Liquidator. In view of the difficulty faced by the Power of Attorney holder of the Official Liquidator in getting the boundary wall of the property of the Company constructed (as detailed in Annexure 10 series of C.W.J.C. No. 13599 of 2012), the said writ application was preferred by respondent no. 7. The above writ application was disposed of by a co-ordinate bench of this Court vide order dated 21.11.2014, (as contained in Annexure 4), with the following directions:



“No doubt, it is the case of the petitioner that a representation was filed before the Collector and up till now the Collector has not passed any order on the representation but in my view, when the facts pleaded in the writ petition have not been denied by the State, there is no hurdle before this court to issue direction to the respondents no. 4 and 5 to provide appropriate security to the petitioner/company or its authorized person and, accordingly, it is ordered that respondents no. 4 and 5 shall provide appropriate security to the petitioner/company or its authorized person in accordance with the rules within a period of one month from the date of receipt/production of copy of this order in respect of lands mentioned at Annexure -10 series to the writ petition. However, it is made clear that petitioner should also approach to the respondents no.4 and 5 within two weeks from today raising his grievance annexing the Annexure-10 series to this petition.

With the aforesaid observation/direction, this petition stands disposed of.”

Consequently, in view of the above mentioned direction of this Court, Respondent no. 4, the Sub-Divisional Officer, Ara Sadar, vide order dated 29.3.2016 (as contained in Annexure 1), deputed four officers, namely, Sri Rajnish Raman, Assistant Engineer of Ara Road Construction Division and Ravindra Kumar, Assistant Engineer of Ara Road Construction



Division for Ara Circle, Sri Arvind Kumar Yadav, Assistant Engineer of Ara Road Construction Division for Udvantnagar Circle and Sri Ram Prakash Thakur, Estimation branch of Ara Road Construction Division for Garhani Circle as Additional Magistrates for assisting the Incharge Executive Magistrate of police for maintaining law and order in Ara, Udvantnagar and Garhani Circles, respectively. The above named deputed Executive Magistrates were directed to remove the encroachment in their respective areas in order to facilitate the construction of boundary wall and for providing security in maintaining law and order. The petitioners are aggrieved with this order passed by respondent no. 4 (as contained in Annexure 1), on the ground that the petitioner no. 1 was serving in the Martin Railway as a coal-checker and he was allowed to live in the quarter since 15.2.1978. It is further claimed that on 24.4.1998, quarter no. 3 was allotted in the name of Smt. Chinta Devi, wife of petitioner no. 1. The allotment letter has been brought on record as Annexure 2 to the writ application. Petitioner no. 2 is the son of Parvati Devi, who was allotted quarter no. 1 of Loco Colony, Ara, vide letter dated 20.8.1998, as contained in Annexure 3. Likewise, similar allotments were made in favour of other petitioners.

Martin Railway, after closing of its operations, asked



its staff and their family members to stay in the quarters to save their properties from anti-social criminal elements or for preventing its misuse by illegal activists but now, it is submitted by learned Counsel for the petitioners that in the garb of removal of encroachment, the petitioners' residential houses will be demolished, if the order passed by the Sub-Divisional Magistrate, Ara, as contained in Annexure 1, is allowed to continue. The further contention of learned counsel for the petitioners is that security was prayed for with regard to the properties as described in Annexure 10 series of C.W.J.C. No. 13599 of 2012 and, this Court, vide order dated 21.11.2014, directed for providing security to the properties described in Annexure 10 to the said writ application, but respondent no. 4, the Sub-Divisional Magistrate, Ara, vide order dated 29.3.2016, as contained in Annexure 1, purported to have been passed in pursuance to the order of this Court, passed in C.W.J.C. No. 13599 of 2012, has given a blanket order with regard to the properties situated at Ara, Udvant Nagar and Garhani circles which includes the residential quarters of the petitioners and the same are not covered under the directions of this Court in the aforementioned writ application. The houses in which the petitioners are residing are the only places of their shelters and if they are demolished, they will become homeless, hence, the prayer



has been made for quashing of the order contained in Annexure 1.

Mr. Rajendra Narain, learned Senior counsel appearing for respondent no. 7- Company, submits that the liquidation proceeding is going on since 1977. The Company Petition no. 623 of 1977 is still pending before the Company Court of Calcutta High Court and this fact has not been controverted by the learned counsel for the petitioners, hence, the present writ application is absolutely misconceived and not maintainable and in view of the provision under Section 446(2) of the Companies Act and if the petitioner is having any grievance, redressal of the same would be maintainable only before the Company Court of Calcutta High Court. It is further submitted that in pursuance to the liquidation order, one Kedar Nath Fatehpuria was appointed as Official Liquidator of the Company. The lands of the company have been sold in public auction after obtaining due permission from the Company Court. Earlier, the State of Bihar had also made its claim before the Company Court of Calcutta High Court over the disputed land but did not succeed. The order of the Company Court was also affirmed by the Hon'ble Supreme Court. Subsequently, the Government of Bihar initiated revenue proceeding in Case No. 1 of 2009 before the Survey Settlement Superintendent, Bhojpur/Rohtas, for rectification of the survey register in respect of the lands in question. The Survey



Settlement Superintendent, Bhojpur/Rohtas, under its order dated 19th February, 2009, directed to initiate proceeding under Rule 467 of the Bihar Survey & Settlement Manual, 1959, for correction of the entry. Feeling aggrieved, the Official Liquidator of the Company, approached this Court under Article 226 of the Constitution of India, in C.W.J.C. No. 9790 of 2008, to challenge the aforesaid order dated 19th February, 2009. The writ application was contested by the State of Bihar. The learned Single Judge, after considering the provision stipulated under Rule 467 of the Manual and the factum that the winding up proceeding is pending before the Company Court, i.e., Calcutta High Court, allowed the writ application and set aside the aforesaid order dated 19th February, 2009 made by the Superintendent of Survey and Settlement, Bhojpur/Rohtas, in Case No. 1 of 2009. The learned Single Judge also held that the State Government, if it had any grievance, it was required to be ventilated before the Calcutta High Court (Company Court). Feeling aggrieved, the State Government preferred appeal vide L.P.A. No. 683 of 2011. A Division Bench of this Court, fully agreed with the order of the learned Single Judge, by holding that once the matter was settled in the year 2000, the Superintendent of Survey and Settlement could not have reopened the matter. Further, the Company being in the process of winding up, the Company



Court is the *custodia legis* of the assets of the Company. Hence, without the permission of the Company Court, no proceeding could have been initiated against the Company which is under the process of winding up. Consequently, the Division Bench, vide order dated 12.7.2013 dismissed the appeal *in limine*.

It is further submitted that the order dated 29.3.2016 passed by respondent no. 4 as contained in Annexure 1, does not suggest that it amounts to demolition of the residential houses of the petitioners, in any manner. Further more, the Company went into liquidation in 1977 and the petitioners claimed to have been issued the allotment letter on 24.4.1998, as contained in Annexure 2, and 20.8.1998, as contained in Annexure 3, when the Official Liquidator was the incharge of the property of the Company. Hence, these letters prima facie, appear to be forged and fabricated, which shatters the very basis of the claim of the petitioners.

Learned AAG 9, appearing for respondent nos. 1 to 6, submits that respondent no. 4 passed the order dated 29.3.2016 in pursuance to the order dated 21.11.2014, passed in C.W.J.C. No. 13599 of 2012 and thereby, only deputed the Magistrate to assist the police for providing security to respondent no. 7. The District Magistrate, Bhojpur, took action and directed the officials and formed a Committee of five members for taking action and vide



letter no. 82, dated 22.3.2016, the matter was communicated to the District Magistrate, Bhojpur, in compliance of the order as contained in Annexure 4. Thereafter, the District Magistrate, Bhojpur vide letter no. 881, dated 26.3.2016, directed the concerned officials to provide appropriate security in raising boundary wall as requested by the Power of Attorney Holder and consequently, the order dated 29.3.2016, as contained in Annexure 1, was issued for deputing the Magistrates to provide adequate security.

Considering the rival submission of the parties, this Court is of the view that admittedly the petitioners are claiming right of residence in the residential quarters of the company in question. This is also an admitted fact that the Company in question is under liquidation and the Company Petition no. 623 of 1977 is still pending before the Company Court of Calcutta High Court, hence, the Company Court is the *custodia legis* of the assets of the Company. Though the winding up proceeding was initiated through Company Petition no. 623 of 1977, under the Companies Act, 1956, which has been repealed by the Companies Act, 2013 (hereinafter referred to as '2013 Act') and the Company Petition has still not been transferred under sub-section (1) of Section 434 of 2013 Act to the Tribunal, hence, as per the second proviso to sub section (1) of Section 465 of 2013 Act, the provisions of Companies Act 1956, in



regard to the power, jurisdiction, authority and functions of the Board of Company Law Administration and Court shall continue to apply. The Central Government in exercise of the powers under sub-section (1) and (2) of Section 434 of 2013 Act, published in the official Gazette by way of Notification, dated 7.12.2016, the Companies (Transfer of Pending Proceeding) Rules, 2016 (hereinafter referred to as '2016 Rules'). Rule 4 of the 2016 Rules stipulates the provision for pending proceeding relating to voluntary winding up, however, the said Rule 4 will come into force w.e.f. 1.4.2017. Hence, in the present case as per the second proviso to sub-section (1) of Section 465 of 2013 Act, the provisions of Companies Act, 1956 will apply since the Company Petition has not been transferred to the Tribunal. Therefore, the remedy to the petitioners lies under the provisions of section 446(2) of the Companies Act, 1956 which reads as follows:

“446. Suits stayed on winding up order- (1)

(2) ³ The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being, in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company,

whether such suit or proceeding has been instituted or is



instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 .] (65 of 1960 .)”

It clearly stipulates that the Court, which is winding up the Company, shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of any suit or proceeding by or against the company or any claim made by or against the company.

There is nothing on record which reflects that the petitioners ever made any petition or claim before the Company Court of Calcutta High Court, hence, the writ application is absolutely misconceived. The writ application is also not maintainable in view of the fact that the issue has been settled, when the Government of Bihar tried to make correction in the revenue records through Case No. 1 of 2009, wherein, the Superintendent of Survey and Settlement, Bhojpur/Rohtas, passed an order on 19.2.2009, directing to initiate proceeding under Rule 467 of the Bihar Survey and Settlement Manual, 1959, for correction of the entry and the same was challenged in the writ application and the writ court held that once the claim of the State



Government was rejected by the Company Court, the State Government could not have initiated the proceeding and the said order in the writ application was upheld by a Division Bench in Letter Patent Appeal.

Under such circumstances, in considered opinion of this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot decide the claim of the petitioners, whether they were allotted the quarters or not. More over, the order, as contained in Annexure 1, dated 29.3.2016 passed by respondent no. 4, does not suggest, in any manner, that it is affecting any property of any citizen, except, providing security by constructing a boundary wall by the Power of Attorney Holder of the Official Liquidator. Hence, this Court is inclined not to interfere with the writ application.

Accordingly, this writ application is dismissed.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13/04/2017
Transmission Date	NA

