

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.976 of 2016

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1. Digambar Jha Son of Niras Jha, resident of village- (Shilanath) Dullipatti,
P.O.- Dullipatti, P.S. Jaynagar, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani
2. The Divisional Commissioner, Darbhanga Division, Darbhanga
3. The Collector, Madhubani
4. The Additional Collector, Madhubani
5. The Deputy Collector Land Reforms, Jaynagar District- Madhubani
6. The Sub-Divisional Officer, District Madhubani
7. The Circle officer Jaynagar, District- Madhubani
8. The Yogi Rai son of Late Awadh Rai resident of village- (Shilanath)
Dullipatti, P.S. Jaynagar, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gagan Deo Yadav

For the Respondent/s : Mr. SC18- N. Hoda Khan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

6 14-07-2017 Heard Mr. Gagan Deo Yadav, learned counsel for the petitioner, learned AC SC-1 appearing on behalf of the respondent nos. 1 to 7 and Mr. Jagdish Prasad Singh, learned counsel appearing on behalf of the respondent no.8.

The writ application has been filed with a prayer for direction to the respondents to get the encroachment removed, made by respondent no.8 over public road appertaining to khata no.481, plot no.2616 situated in Mauza (Shilanath) Dullipatti in the district of Madhubani.

This Court in the order dated 22.03.2017 noticed the



fact that though the counter affidavit has been filed on behalf of the respondent nos.3 to 7, but it does not disclose whether the proceeding of Encroachment Case No.07 of 2010-11 has been concluded, as yet or not. This Court vide order dated 22.03.2017 permitted the learned SC-18 to file supplementary counter affidavit on behalf of the respondent nos.3 and 4 and the Collector, Madhubani was directed to seize the entire records of Encroachment Case No.07 of 2010-11 forthwith and transmit the same to this Court through some responsible officer on 17th April, 2017. This Court vide order dated 17.04.2017 directed learned SC-1 to keep the records of the encroachment case.

In pursuance to the abovementioned order, a supplementary counter affidavit has been filed on behalf of the respondent no.3 dated 12.04.2017 wherein a statement has been made in paragraph no.5 that the proceeding of Encroachment Case No.07 of 2010-11 has already been concluded. A supplementary counter affidavit has also been filed on behalf of the respondent no.3 dated 28.04.2017 wherein a statement has been made in paragraph no.6 that the encroachment has been removed from the land in question.

It appears from the counter affidavit that the encroachment was made both by petitioner and the respondent



no.8 on the public road, but the same has been removed.

Learned counsel for the petitioner submits that he is not controverting the statements made in the counter affidavit filed on behalf of the respondent no.3 and, therefore, the writ application has become infructuous, hence he wants to withdraw the writ application.

Learned counsel for the respondent no.8 submits that he claims his right and title over the land in question.

In view of this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, the right and title of respondent no.8 over the land in question cannot be decided, which is based on serious disputed question of fact, which can only be decided by leading evidence in a regular Suit before the Civil Court. If the respondent no.8 is aggrieved by the order passed in Encroachment Case No.07 of 2010-11, he is at liberty to prefer an appeal against the said order. Accordingly, this writ application is disposed of as withdrawn.

Learned SC-1 is permitted to return the original record to the concerned authority.

Arvind/-

(Dinesh Kumar Singh, J)

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