

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.602 of 2016
IN
Civil Writ Jurisdiction Case No. 15718 of 2010**

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1. Most. Sita Devi wife of Late Ramashish Gope Resident of Nuranibagh Colony Sakri Gali Gwal Toli, Police Station Alamganj, (P.S. No. 11), District - Patna.
2. Most. Sumitra Devi wife of Late Bisundayal Yadav Resident of Nuranibagh Colony Sakri Gali Gwal Toli, Police Station Alamganj, (P.S. No. 11), District - Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Collector, Patna, Patna Collectariat, District Patna.
2. The Additional Collector, Patna Collectariat, Patna.
3. The Executive Engineer, Ganga Bridge Project Wing, P.W.D. Division No. III, Gulzarbagh, Patna City (Patna Sahib), Patna - 800007.
4. Bijay Prasad Singh son of Late Lal Mani Singh Resident of Mohalla Kankarbagh, South of Patna Milan Auto Works, P.O. & P.S. Kankarbagh, District and Town Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhesh Kumar

For the Respondent/s : Mr. LALIT KISHORE (PAAG)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-09-2017

I.A. No. 2715 of 2016

This appeal has been filed by the appellant challenging the order dated 01.05.2012 passed by the writ court in C.W.J.C. No. 15718 of 2010. There being delay of 3 years and 257 days, I.A. No. 2715/2016 has been filed. On a consideration of the prayer made in the application, it is seen that after the writ petition was disposed of



on 01.05.2012, the petitioner filed Civil Review No. 441 of 2012 immediately which was disposed of on 01.05.2013 granting liberty of evaluating alternative remedy and thereafter the petitioner aggrieved by the same again filed C.W.J.C. No. 17962 of 2013 whereby the petitioner resisted the order/letter seeking vacation of the land and in C.W.J.C. No. 17962 of 2013 it was indicated that in the light of the order passed on 01.05.2012 the second writ petition was not maintainable, and he withdrew the petition and filed this LPA. Keeping in view of the aforesaid, we find that there is reasonable explanation for the delay.

I.A. No. 2715 of 2016 is allowed.

The delay in filing of the appeal is condoned.

Accordingly, the I.A. No. 2715 of 2016 is disposed of.

L.P.A. No. 602 of 2016

The dispute in question pertains to land in question bearing Plot No. C/65 of Rehabilitation Scheme No. 8/B situated at Nooranibigha Colony, P.S. Alamganj, Thana No. 11. Bijay Prasad Singh filed writ petition in question and it was his case that the Government has acquired the free hold raiyati land and his house for construction of Ganga Bridge Project vide Land Acquisition Case No. 41/1971/71 and 42/1971/71 and the petitioner has got the land in question under the Rehabilitation Scheme after acquisition of his land.



The grievance of the petitioner is that inspite of allotment of the plot in question bearing Plot No. C/65 under the Rehabilitation Scheme, the plot is not being handed over to him and possession not being granted. Taking note of the aforesaid grievances of the petitioner, on 01.05.2012, the learned writ court directed to honour the sale deed in favour of the respondent Bijay Prasad Singh acquiring his land and allotting him Plot No. C/65 and issued mandamus in question.

However, now before us it is the case of the present appellants that before directing for handing over possession of Plot No. C/65 to Bijay Prasad Singh, they were not heard and no notice was issued to them and the State Government did not place the correct fact before the Writ Court. It is the case of the appellants before us that the land and house bearing No. 193A/150A, Circle No. 67, Ward No. 41, M.S. Plot No. 1951 so also plot in question bearing Plot No. C/65 situated in the area in question was purchased by one Ragho Mahto and his name is recorded as owner and occupier of the said land. It is said that after purchase of the land, Ragho Mahto and his family members are living peacefully in the land in question. However, it is said that Ragho Mahto died in the year 1962 leaving behind three sons and a daughter. In paragraph-4 of the memorandum of appeal their names are recorded and so also in the records of Municipal Corporation. It is said that in the year 1972 for acquisition



of the land for the purpose of rehabilitation of the persons whose land/house was acquired by the government for the Ganga Bridge Project, the notification was issued but without noticing them and without conducting the acquisition process, the land in question has been handed over to the petitioners. It is the specific case of the appellant that in the notification published in the Bihar Gazette in the year 1972 for acquisition of land, there was no record of Plot No. 1951 and the plot in question C/65 which originally formed part of Plot No. 1951.

The petitioners further stated that the land has not been acquired and without dispossessing, this appeal has been filed even though, respondent no. 4 Bijay Prasad Singh seek his claim in the allotment made to the State Government. We are informed that challenging the action of the State Government and seeking a declaration that the appellants are owners of the plot and it has not been acquired that is why also in the matter filed Civil Suit in question pending based on one of the family members of late Ragho Mahto.

Be that as it may, the dispute now before us in this appeal is as to whether the plot in question formed part of the acquisition proceedings that took place in the year 1972 and whether after hearing the owners of the plot in question who are said to have inherited the plot from Ragho Mahto, they have been dispossessed



and possession taken over. According to the appellant he has been dispossessed only after the writ petition was disposed and the matter is now pending.

It is clear that there are serious disputes with regard to ownership of the plots in question and the action undertaken for acquisition and rehabilitation of the displaced persons and without taking note of all this, without even issuing notice to the aggrieved persons concerned, the writ petition has been disposed of. We find that only relying on the statements made in the counter affidavit, without going into their veracity or otherwise, the proceedings held before the learned Court below, the learned writ court came to the conclusion that once there was a sale deed relating to Plot No. C/65 to the original petitioner Bijay Prasad Singh, he was the owner of the plot in question and directed for handing over the possession to him.

In our considered view, the writ court at least when review application was filed, should have directed the parties for taking recourse to the common law remedy of seeking injunction and declaration of title over the plots in question. This having not been done, we are of the considered view that exercise of writ jurisdiction under Article 226 of the Constitution of India by the learned Writ Court was not warranted. We, accordingly, allow this appeal and quash the order dated 01.05.2012 passed in C.W.J.C. No.15718 of



2010 granting liberty to the parties to take recourse to the remedy available of seeking injunction and declaration. In case appeals have been disposed of by virtue of the order issued while implementing the order passed on 01.05.2012 in C.W.J.C. No. 15718 of 2010, we grant liberty to the appellant to file an application for injunction before the competent court by an independent application seeking injunction and the court or authority concerned is directed to decide the same after hearing all concerned and based the material available on record and following the due process of law, within a period of three months without being influenced by the order passed in the writ petition and the observation made therein.

With the aforesaid modification in the order passed by the learned Writ Court on 01.05.2012 in C.W.J.C. No. 15718 of 2010 this appeal is allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2017
Transmission Date	NA

