

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.483 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 2153 of 2005

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Md. Mahbub S/o Late Gaffar Resident of Village + P.O. Chak Majahid, Police Station Mahua, District Vaishali.

.... Respondent - Appellant

Versus

1. The State of Bihar.
 2. The District Magistrate, Vaishali.
 3. The Superintendent of Police, Vaishali.
 4. The Officer-in-Charge of Police Station Mahua, District Vaishali.
 5. Gulam Md. Saddique S/o Late Md. Sami Resident of Mohalla Chhoti Saraiganj, P.O. Muzaffarpur Town, District Muzaffarpur.
 6. (i) Md. Anju Mian S/o Late Rasul Bux
(ii) Md. Anwar Mian S/o Late Rasul Bux
(iii) Md. Mustak S/o Late Rasul Bux
(iv) Md. Kalu S/o Late Rasul Bux
- All Resident of Village Chak Mojahid, P.O. and P.S. Mahua, District Vaishali.

..... Respondents – Respondents.

10. Ram Das Ray

11. Jai Kishun Ray

Both S/o Late Dhanpat Ray

Resident of Village Chak Mojahid, P.O. and P.S. Mahua, District Vaishali.

.... Petitioners – Respondents.

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Appearance:

For the Appellant/s : Mr. Abdul Mannan Khan and
Mr. Binay Kumar, Advocates.

For the Respondent-State: Ms. Binita Singh, SC 28 and
Mr. Kumar Kamal Nayan, AC to SC 28.

For the Respondents 7 & 8: Mr. Damodar Prasad Tiwary, Advocate.

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

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 26-07-2017

This Letters Patent Appeal arises out of an order dated
11.07.2014 passed by the learned Single Judge of this Court in CWJC
No. 2153/2005 by which the learned Single Judge having discussed



the facts and the issues involved in the present case reached to a conclusion that the disputed plots being still in possession of the Circle Officer, Mahua as receiver under Section 146 of the Code of Criminal Procedure, he is legally bound to hand over possession of the plots to the petitioners in accordance with law but unfortunately the concerned receiver has failed to do so. In the given circumstance the learned Single Judge has directed respondents no. 2, 3 & 4, who are District Magistrate, Superintendent of Police and Circle Officer, Mahua, to take effective steps to restore the possession of petitioners over the plots in question within two weeks from the date of receipt / production of a copy of the order.

2. The learned Single Judge having found that on the earlier occasion not only the Sub Divisional Magistrate, Mahua, Vaishali but also other concerned officials refused to give any assistance to the petitioner to get possession of the plots which was a clear indication of failure of administration also directed by the impugned order that any failure on the part of the concerned respondents in implementation of the order within the period, as fixed by the Court, shall entail the State to pay a compensation of Rs. 20,000/- to the petitioners and the petitioners shall be at liberty to seek appropriate remedy before the appropriate forum, regarding non-implementation of the order.

3. The private respondent no. 7, who despite service of



notice in the Writ Application did not turn up to contest the writ, is in appeal before us and is assailing the order passed by the learned Single Judge on the ground *inter alia* that it is an *ex parte* order and the writ petitioner concealed before the learned Single Judge that a Title Suit bearing no. 215/2004 in respect of the disputed plots was going on in the court of learned Sub Judge I, Hajipur for a declaration that the land in question is a part of Imambara / Kabristan / Karbala etc., throughout used by the local Muslims.

4. We will discuss the facts of the case giving rise to present situation a little later in this judgment.

5. This case essentially raises an issue as to what is the Rule of Law. 'Rule of Law' may have several meanings and one of them is that 'Rule of Law' means 'No person or government is above the law'. If we enter into the origin and concept of the Rule of Law, the term 'Rule of Law' is derived from the phrase '*La Principe de legality*' (the principle of legality) which refers to 'a government based on principles of law and not of men'. The law must be obeyed by the people. According to World Justice Project, a multi disciplinary organization working to advance the Rule of Law around the world, definition of 'Rule of Law' comprises of the following universal principles:-

(i) The government and its officials and agents as well as individuals and private entities are accountable under the



law.

(ii) The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights; including the security of persons and property and certain core human rights.

(iii) The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.

(iv) Justice is delivered timely by competent, ethical and independent representatives and neutrals, who are of sufficient number, have adequate resources and reflect the make up of the communities they serve.

These four universal principles constitute a working definition of 'Rule of Law'.

6. The Constitution of India, in its Preamble, reads as under:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;”



7. Our Constitution guarantees justice to all its citizens. In the aforementioned background, we find that the learned Single Judge has categorically discussed the case of the writ petitioners taking note of the chequered history of litigation in which the petitioners have come out successful at all stages of the prosecution. The writ petitioners, who are respondents no. 7 & 8 in the present appeal, claim their right, title and interest as also possession over the Plots No. 668 and 669 under revisional Khata No. 201 and 20 measuring an area 0.18.1, Plots No. 676 and 679 falling in revisional Khata No. 201 and 202 and Plots No. 679, 668, 562, 690 and 679 falling under revisional Khata No. 201 measuring an area 04.16, 03.6, 0.3.0 respectively and some other plots situated at Chakazinizam, P.S. Mahua, District Vaishali as per detail shown in the writ application. It has been the consistent case of the writ petitioners – respondents no. 7 and 8 that they purchased the land in question in the year 1966 from Bibi Saleha Bandi, wife of Ghulam Hasan and also from Gulam Hasan and accordingly they came in possession of the aforesaid plots. The names of the writ petitioners – respondents no. 7 and 8 were mutated in revenue records and they started paying rent to the State Government but after some time a dispute arose between the petitioners and the present appellant as also some of the other private respondents who were arrayed as parties in the Writ Application. A proceeding under



Section 145 Cr.P.C. bearing Case no. 474 of 1967 / Trial No. 89 of 1979 was initiated in which the petitioners' possession was declared. The private respondents of the Writ Petition challenged the said order in Cr. Revision No. 1010 of 1979 before this Court which was also disposed of by a bench of this court.

8. The learned Single Judge has meticulously taken note of each and every stage of the proceeding. In the Criminal Revision preferred before this Court it was ordered that the entire matter be sent back to the Consolidation Officer and the order passed under Section 145 Cr.P.C. will be subject to the result of the proceeding before the Consolidation Officer (Annexure-1 to the Writ Application).

9. Thereafter, the writ petitioners lost their case before the Consolidation Authorities and their request to correct their names in the consolidation records on the basis of the sale deed was not accepted, therefore, the petitioners moved this Court in CWJC No. 5/1980 for setting aside those orders and the Writ Application was allowed and the matter was remitted back to the Consolidation Officer to dispose of the same in the light of the observations given by this Court (Annexure-2 to the Writ Application). Thereafter, vide order, as contained in Annexure-3 to the Writ Application, the Consolidation Officer decided the matter in favour of the writ petitioners; the private respondents of the Writ Application challenged the legality of the order before the Director of Consolidation, Bihar, Patna but they lost.



A Writ Application being CWJC No. 11190/1994 was filed by one Gulam Mohammad Siddique and others before this Court challenging the order of the Joint Director of Consolidation, however, vide Annexure-4 to the Writ Application, the same was dismissed. In an intra-court appeal vide LPA No. 1480/1995, a co-ordinate bench of this Court disposed of the appeal with the following observations:-

“We fully agree with the view taken by the learned Single Judge that on the basis of the materials on the record no illegality can be found in the order. However, it will be open for the appellant to get the matter decided by a civil court in view of the law laid down by a Full Bench of this court in the case of *Seikh Haider v. Md. Yusuf Ansari*, reported in 2000 (2) PLJR 338 (DB).”

10. Thereafter, a final Chakbandi Khatian was also prepared in the name of the writ-petitioners. During pendency of the case before the consolidation court, a proceeding under Section 145 Cr.P.C., bearing Case no. 3059/1996, was started over the land which the writ petitioners were claiming and vide order dated 06.03.1987 the land, description of which has been mentioned in paragraph 22 of the Writ Application, was attached under Section 146 Cr.P.C. and the Anchal Adhikari, Mahua was appointed as receiver of the aforesaid land. The writ petitioners challenged the proceeding initiated under Section 145 Cr.P.C. in this Court vide Cr. Misc. No. 9967/1987 as it was the case of the writ petitioners that the case between the parties



had already been decided by the consolidation court and, therefore, a direction be given to the learned court below to drop the proceeding under Section 145 Cr.P.C. Vide Annexure-6 to the Writ Application, which is an order dated 26.11.1987 in Cr. Misc. No. 9967/1987, a learned Single Judge of this Court held that the dispute between the first party petitioner and the second party in relation to the land involved had already received adjudication in favour of the petitioners by the Consolidation Officer, Mahua by the judgment dated 21.01.1987. No appeal was preferred against the said order, therefore, the right of the petitioners in all respect, i.e., title and interest, has been decided. The Learned Single Judge directed the concerned magistrate to examine this aspect of the matter and if the issue between the parties had already been determined by the consolidation authority finally, he should drop the proceeding. In the light of the order passed by this Court, the learned Executive Magistrate, Mahua, Vaishali examined the matter and concluded that the order passed by the Joint Director, Consolidation, is an order passed by the Consolidation Authority is final. The learned Executive Magistrate also concluded that on Plot No. 668 measuring area 3 decimals there is an old structure of Muslim community which has been found by the Consolidation Officer and, therefore, the same is excluded from the order.

11. As it appears, the private respondents including the



present appellant filed a declaratory title suit giving rise to Title Suit No. 215/2004 in the court of the learned Sub Judge I, Hajipur at Vaishali in which they sought a declaration that the sale deed dated 08.12.1966 executed by Gulam Hassan and his wife Saleha Bandi in favour of the defendants of the suit (the writ petitioners) is fraudulent and not binding upon the Muslim community and that the suit land be declared a land in use for the relevant purpose of Muslim community such as Karbala / Imambara / Kabristan. A copy of the plaint of T.S. No. 215/2004 is available on the record.

12. Since the Consolidation Authority finally concluded the right, title and possession of the writ petitioners in respect of the land, except the land on which the old structure of Muslim community was standing, and the 145 Cr.P.C. proceeding in which attachment order was passed stood dropped, the writ petitioners sought restoration of their possession from the receiver.

13. Despite all efforts taken by the writ petitioners to get restored their possession by the receiver Anchal Adhikari, the petitioners were not given possession of those land on the solitary ground that apprehending communal tension the State administrative were not providing adequate police force to put the writ petitioners in possession by applying force if required. The writ petitioners, therefore, approached this Court vide CWJC No. 2153/2005 with a prayer to issue a writ or order or direction to the respondents to give



legal protection to the petitioners' life and property by passing an appropriate order. The prayer portion of the Writ Application reads as under:-

“It is, therefore, prayed that your lordship may be graciously pleased to admit this application, call for the record of the case, issue notice to the respondents to show cause as to why the possession of the petitioners be not restored over the land in question and after cause being shown, if any, direct the respondents to restore possession of the petitioner over the land in question and it is further prayed that a direction be issued to respondent to protect the petitioners life, liberty and property in accordance with law or pass such order or orders as your lordship may deem fit and proper.”

14. Notices were issued to the private respondents but despite service they did not turn up to contest the Writ Application.

15. The Circle Officer, who was also appointed as a receiver of the land, filed a counter affidavit in the Writ Application on behalf of District Magistrate, Vaishali (Respondent no. 2) in which besides stating the facts of the earlier round of proceeding, the only reason given by him for not handing over possession of the land to the petitioners is given in Paragraph 26 of his counter affidavit and, for the sake of ready reference, the same is reproduced hereunder:-

“That with regard to the averment made in Paragraph 31 of the writ petition the respondent humbly submits that it is not fully correct. The C.O. Mahua has taken



all proper steps as per letter bearing letter no. 543 dated 7.12.1995 for fixing date for giving possession. S.P. Vaishali and in this several proper steps have been taken by these respondents but on objection raised by the private respondents process of giving possession could have been expedited.”

16. Thus, what appears from a bare reading of the stand taken by the Circle Officer, he was unable to hand over possession of the land of which he is the receiver because of the objection taken by the private respondents to the Writ Application. This is what has been taken seriously by the learned Single Judge and rightly so because the stand taken by the Circle Officer clearly indicates failure of the State administration in implementing the Rule of Law. The learned Single Judge has gone by the stand taken in the counter affidavit filed by the District Magistrate and sworn by the Circle Officer, as stated above, and having taken note of the stand of the District Magistrate, the learned Single Judge has come to a conclusion that from the materials available on the record even though the disputed plots are still in possession of the concerned receiver and he is legally bound to hand over all the disputed plots to the writ petitioners in accordance with law but unfortunately the receiver has not done so which is clearly indicating that there is a failure of administration.

17. One of the private respondents, who has filed the present intra-court-appeal initially took a stand that there was title suit



bearing no. 215/2004 pending in the court of the learned Sub Judge I, Hajipur against the writ petitioners, however, the same was suppressed by the writ petitioners and thereby played a fraud upon the Hon'ble Court and got an *ex parte* order passed in this case. This Court finds that mere filing of a declaratory suit, that too, in respect of plots under attachment U/S 146 Cr.P.C. without their being any relief for recovery of possession was of no significance. There was no order of injunction so it cannot be said to be a case of suppression, however, this issue has further lost its relevance as after filing of the Letters Patent Appeal and during its pendency the plaintiffs of the said suit failed to establish their case and could not prove that the sale deed in favour of the writ petitioners were fraudulent, the suit failed, however, learned counsel for the appellant has audacity to argue that despite the failure of the plaintiffs to get a decree in their favour the dispute is not final and the dispute cannot be said to have come to an end. A copy of the judgment and decree of the learned Sub Judge in the said Title Suit No. 215/2004 has been brought on the record, which is Annexure-F to the counter affidavit filed on behalf of the respondents no. 7 & 8 in the present LPA. A perusal of the judgment and decree of the learned trial court would show that the learned trial court has declared the right of the Muslim community over 17 decimals of land in Plot No. 674 and one decimal of land in Plot no. 675 but so far as their claim against the writ petitioners was



concerned, they failed to establish that the sale deed in favour of the private respondents (the writ petitioners) were fraudulent. In fact the private respondents are not claiming their right, title and possession over Plots No. 674 and 675 which are recorded in the Khatiyani in the name of Karbala / Kabristan / Imambara. The plaintiffs have nothing to do with those plots, still the private respondents are not allowing the receiver to hand over possession of the land of which right, title and interest have been declared in favour of the writ petitioners and they have acquired legal right to get possession from the receiver.

18. So far as the submission of the appellant that it is an *ex parte* order is concerned, the submission is baseless as there is a report showing service of notice on the private respondents but despite service of notice they did not turn up to contest the Writ Application.

19. In the present Letters Patent Appeal, once again a counter affidavit has been filed on behalf of the Superintendent of Police, Vaishali through the Additional Superintendent of Police. The affidavit was sworn on 30.04.2015 and perusal thereof only confirms the belief that the district administration has not given effect to the various orders of the court below and they are trying to sit idle over the matter in the name of objection from the private respondents.

20. In view of what has been discussed hereinabove, this Court would reach to an inescapable conclusion that the Circle Officer



being a receiver is holding the property in question as *custodia legis*, i.e., the property is in possession of law and once it has been held by the various courts of law and the authorities that the writ petitioners – respondents no. 7 and 8 in the present appeal are having right, title and interest in those lands, the receiver, who is the custodian of the property, has to hand over the possession to the writ petitioners and in order to abide by the mandate of our Constitution which guarantees justice to each and all citizens of the country, the district administration is bound to comply with the order passed by the learned Single Judge which must be done within a period of 15 days from the date of receipt of a copy of this order.

21. At the very beginning of the judgment, we have noted the definition of ‘Rule of Law’ and we reiterate the same that ‘Rule of Law’ refers to ‘A government based on principles of law and not of men’. The law must be obeyed by the people.

22. The Letters Patent Appeal is thus dismissed. There will be no order as to costs.

(Rajeev Ranjan Prasad, J)

I agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

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