

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.272 of 2011
IN
Civil Writ Jurisdiction Case No. 2108 of 2009**

- =====
1. Patna Municipal Corporation Through Its Chairman.
2. The Commissioner-Cum-Chief Executive Officer , Patna Municipal Corporation.

.... Respondents- Appellant/s

Versus

1. Dinesh Rai S/O Late Shyam Sunder Rai Resident Of Puniachak , P.S. Shasti Nagar In The District Of Patna. Writ Petitioner –Respondent
2. The State Of Bihar Through Its Secretary, Urban Development Department , Govt. Of Bihar , Patna.
3. The District Magistrate-Cum Collector , Patna , District- Patna.
4. Superintendent Of Police , Patna, District-Patna.

.... ...Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh
Mr. Sanjay Prakash Verma
For the Respondent/s : Mr. Manojeshwar Prasad Singh, Mr. Suresh
Chandra Prasad, Mr. Ratan Kumar Singh
and Mr. Madhukar Pandey

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-10-2017

Seeking exception to an order dated 16.09.2009 passed by the learned Writ Court in CWJC No. 2108 of 2009 this appeal has been filed by the Patna Municipal Corporation under Clause 10 of the Letters Patent.

Respondent-Dinesh Rai initially in the year 2006 filed the writ petition bearing CWJC No. 12935 of 2006 and it was his case in that writ petition that the respondent in the writ petition, namely, the



authorities of the Patna Municipal Corporation (hereinafter referred to as 'the Corporation') are going to construct a wall surrounding three sides of the land in an illegal manner. On 22.10.2007, the writ petition was disposed of and the Commissioner-cum-Chief Executive Officer of the Corporation was directed to decide the representation. The representation was rejected by the Municipal Commissioner, Patna Nagar Nigam, on 21.08.2008 and, therefore, the second writ petition was filed. In the order passed by the Commissioner which was impugned in the writ petition, the Commissioner found that in the land in question a sump house has been constructed by the Corporation and the petitioner's title to the land was found to be not established. It was also found that certain acquisition of land had taken place.

While hearing the writ petition, the Writ Court appointed a Commission of Advocates and based on the report submitted by the Commission the Writ Court found that the sump house is found to be existing in the area and the constructed portion of the sump house 12472 sq.ft. and the boundary encircling the sump house to be in 8804.98 sq.ft. The remaining area was found to be vacant.

During the course of hearing of the writ petition, the learned Writ Court found that there was no record to show that the land in question has ever been acquired after de-notification. It also



found that neither the Corporation nor the petitioner can be held to be owner of the land and claim their possession under Article 226 of the Constitution. At the same time, the petitioner made a statement that he would not claim any right over the area, i.e. 8804.98 sq.ft. where the sump house is created and functioning but would be satisfied if the vacant portion is handed over to him.

The learned Writ Court took note of all these factors and then observed that if there is a dispute for title and ownership, the same can only be adjudicated by a court of competent civil jurisdiction, but in the light of the fact that the petitioner in paragraph-8 of the writ petition made certain statement with regard to his right. Based on the rights to succession, possession over the vacant area, was directed to be given to the petitioner.

After hearing learned counsel for the parties at length we find that the with regard to the title and ownership of the land, the learned Writ Court has relegated the parties to file a civil suit. But only based on some averments in paragraph-8 of the writ petition possession of the vacant area has been directed to be handed over to the respondent-petitioner. We are also informed today that the respondent-petitioner has already instituted a civil suit seeking his right of title and ownership over the vacant land after the impugned judgment was rendered and the same suit is still pending and we find



that while admitting the writ petition, on 26.04.2011, i.e. more than six years back, the direction to give possession to the respondent-petitioner was stayed by this Court. As a consequence thereof, the possession still continues with the Corporation. In the light of the finding recorded by the learned Writ Court that there is serious dispute with regard to title and ownership and the same cannot be decided in the writ petition, merely on the basis of some pleadings made in paragraph-8 of the writ petition, in our view directing for handing over of possession was not proper. Instead, the parties should have been left to agitate the dispute by taking recourse to the remedy under the common law where all disputes of facts including title and possession could be decided. Exercise of jurisdiction in that matter under Article 226 was not proper.

Now, as the suit in question has already been initiated and possession has not yet been granted, we are of the considered view that the parties should agitate the matter in the civil suit which is still pending and the order passed by the learned Writ Court being beyond the jurisdiction that could be exercised in a dispute of this nature under Article 226 of the Constitution, should not be given effect to.

Accordingly, we allow this appeal, relegate the parties to ventilate and agitate their dispute in the pending civil suit and with



regard to possession we direct continuation of the order of stay till the decision is not taken by the trial court in the pending suit or any interim arrangement made by the said court.

The appeal stands allowed and the order passed by the learned Writ Court is set aside.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12/10/2017
Transmission Date	N.A.

