

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2308 of 2015

In

Civil Writ Jurisdiction Case No.2649 of 2015

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Karu Choudhary Son of Late Balo Pasi Resident of Mohalla - Jawaripur,
Tika Manjhi, Police Station - Tilka Manjhi, District - Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar through the Collector, Bhagalpur
2. The Anchal Adhikari, Jagdishpur, District Bhagalpur
3. The Officer - in - Charge, Tilka Manjhi Police Station Bhagalpur

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Dhruv Narayan, Senior Advocate Mr. Jitendra Prasad Singh, Advocate
For the Respondents	:	Mr. Dhurjati Kumar Prasad, GP-14 Mr. Ram Shankar Prasad, AC to GP-14

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 18-09-2017

Heard learned senior counsel for the appellant and counsel for the State.

The appellant filed the writ application for a direction in the nature of prohibition restraining the State authorities from evicting him and his family from his residential house situated on Khata No. 100, Khesra Nos. 276 and 214 in Ward No.2, Jail Road, Jawaripur, Tilkamanjhi in the district of Bhagalpur. The house of the appellant was demolished on 05.02.2015. It is his case that a proceeding was initiated under the Bihar Public Land



Encroachment Act, 1956, which was Encroachment Case No.18 of 1992-93 in relation to Plot No.277 of Khata No.100. A notice for removal was issued on 16.02.2013. Subsequently, yet another notice was issued. This time in respect of Plot No.276 and 241. A direction for removal of encroachment was not adhered to, thereafter demolition was effected. One of the reason stated to be a direction of the Division Bench to remove all kinds of encroachment from hospitals in the State of Bihar.

It emerges from the record of the writ application as well as the Letters Patent Appeal that the appellant had initiated a title suit for declaration of title as well as for correction in the Khatian since 'Chikitsa Mahavidyalaya' had been entered in the records. A permanent injunction of restraint was also sought against the State of Bihar from interfering in the possession of the plaintiff over the suit property. The trial court and the lower appellate court held it in favour of the plaintiff. However, on a second appeal preferred by the State of Bihar, which was registered as Second Appeal No. 279 of 1999, the learned single Judge by his judgment dated 27.09.2013 allowed the Second Appeal. Both the judgment and decree of the Courts below were set aside, the suit of the plaintiff was dismissed. The order of the learned single Judge in Second Appeal was affirmed by the Hon'ble Supreme Court.



In other words, as of today the right, title and declaration in favour of the present appellant do not exist and *prima facie* it has been held and established that the land in question belonged to the State of Bihar which was acquired for the purposes of setting up the medical college and the illegal construction thereon had been done by the appellant. This fact had also been accepted by the appellant.

No doubt, a Division Bench has passed a blanket order for removal of encroachment from medical hospitals across the State of Bihar because large scale encroachments had been done by all kinds of antisocial elements and because of the said encroachments, the regular functioning of the hospitals and providing due service was coming in the way.

If the appellant had been removed from his property or the piece and parcel of land merely based on the decision of the Division Bench there could have an occasion for the writ Court or even for us to seriously protect his right. However, since the right, title and interest of the appellant has not been established in his favour at the level of the High Court as well as the Hon'ble Apex Court, his status as an encroacher stands established. If that be so, the demolition which was effected cannot be said to be an unjust kind of action taken by the respondent State authorities. If the



appellant had a right, title and interest over the land in question, this Court would have surely taken the same into consideration and despite the order of the Division Bench, it would have come to the rescue of the appellant.

However, the above facts not being a matter of dispute, this Court will not interfere in any manner with the order of the learned single Judge. The right of the appellant to continue on the property can only accrue in his favour if he moves a civil court of competent jurisdiction and establishes his claim as such if it is permissible in law. However, the same is doubtful in view of the fact that the land in question stood acquired many years ago and the hospital and medical college has been in existence for years together.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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