

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15163 of 2015

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1. Dr. Baijnath Singh, Son of Late Lallan Singh, Permanent resident of Village - Rajpur, Post Office + Police Station - Rajpur, Via - Nokha, District - Rohtas, Presently residing at Hasan Bazar situated in Mauza - Kathar, Police Station - Piro, District - Bhojpur.
 2. Binod Singh, Son of Late Ramsakal Singh resident of Village - Ram Nagar, Basamanpur, Police Station - Piro, District - Bhojpur, Presently residing at Hasan Bazar situated in Mauza - Kathar, Police Station - Piro, District - Rohtas.
 3. Surendra Singh, Son of Late Brahamdeo Singh, Resident of Village - Sakari Ram Nagar, Basmanpur, District - Bhojpur, presently residing at Hasan Bazar situated in Mauza - Kathar, Police Station - Piro, District - Rohtas.
 4. Raj Kishore Singh, Son of Madho Singh, Resident of village - Hasan Bazar, Mauza Kathar, Police Station - Piro, District - Bhojpur.
 5. Ramjee Singh, Son of Sri Radha Mohan Singh, At present residing at Village - Hasan Bazar, Mauza - Kathar, Police Station - Piro, District - Bhojpur.

.... Petitioner/s

Versus

1. The Union of India, through Secretary Railway, Rail Bhawan, New Delhi.
2. Arrah Sasaram Light Railway Company Limited (involuntary Liquidation) an existing Company having Registered Office - 9, Lal Bazar Street, Kolkatta - 700001.
3. Sri Krishna Singh, Son of Shri Ramratan Singh 106 Ram Lall Mukherjee Lane, Salkia, Police Station - Golabari, Howrah, Presently residing at Hetampur Niwas, Road No. 2, Sheopuri, 243 Patliputra Colony, Patna - 13, at present residence of B - 143 Budha Colony, Patna - 800001.
4. Kedar Nath Fatehpuria, Liquidator, Arrah Sasaram Light Railway Company Ltd. (Involuntary Liquidation) an Existing Company having registered Office - 9 Lal Bazar Street, Kolkatta - 700001.
5. The State of Bihar.
6. The Chief Secretary, Government of Bihar, Patna.
7. The Principal Secretary, Department of Home, Patna.
8. The Collector-cum-District Magistrate, Bhojpur, Arrah.
9. The Superintendent of Police, Bhojpur, Arrah.
10. Inspector of Police, Piro, Bhojpur.
11. Officer-in-Charge, Hasan Bazar (Piro), Bhojpur.
12. The General Manager, E.C.R., Hajipur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad,
Mr. Ashok Kumar Singh
For the Respondent State: Mr. Dhurjati Kr. Prasad, GP 7
For the Respondents 2 to 4: Mr. Rajendra Narayan, Sr. Advocate
Mrs. Anju Narayan, Advocate
Mr. Alok Ranjan, Advocate
For Respondent nos. 1 & 12: Mr. Ashok Kr. Keshari
Mrs. Kalpana, Advocates.



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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsels for the parties.

The present writ application has been filed for a direction to restrain the respondent authorities from transferring the immovable properties of the petitioners, in any manner, on the basis of the Specific Power of Attorney in respect of 1.43 acres of land appertaining to Khata No. 1072 and Plot No. 1426 situated in village Kathar, P.S. - Piro, District – Bhojpur, executed by Ara Sasaram Light Railway Company Limited in favour of Sri Krishna Singh, respondent no. 3. Further prayer has been made for setting aside the order dated 21.11.2014 passed in C.W.J.C. No. 13599 of 2012, as contained in Annexure 12, whereby the administration has been directed to provide appropriate security to the official liquidator for constructing boundary wall.

I.A. No. 2992 of 2016 has been filed for staying operation of the order dated 21.11.2014 passed in CWJC No. 13599 of 2012, as contained in Annexure 12.

I.A. No. 4751 of 2017 has been filed for staying the operation of the order dated 21.6.2017 passed by the S.D.O., Piro, Bhojpur, Patna as contained in Annexure 13, in the light of the order dated 21.11.2014 passed in C.W.J.C. No. 13599 of 2012, whereby the Dy.



S.P. has been requested for deputation of police force for construction of the boundary wall over the land.

Vide order dated 18.11.2016, the prayer, whereby the petitioners had sought the quashing of order dated 21.11.2014 passed in CWJC No. 13599 of 2012, has been permitted to be deleted, on the prayer of learned Counsel for the petitioners.

So far as the prayer of the petitioner with regard to a direction to the respondent authorities restraining them from transferring the immovable properties of the petitioners in any manner on the basis of the Specific Power of Attorney and making any construction over the land or deputation of the police force, is concerned, the factual matrix of the case would unveil that Ara-Sasaram Light Railway Company Ltd. (hereinafter referred to as the “Company”) was being managed by Martin Burn Ltd. (hereinafter referred to as “Martin Railway”). In pursuance to a tripartite agreement between the Central Government, District Board of Shahabad and Martin Railway, Martin Railway started its operation of running light rail coaches in between Ara and Sasaram. Martin Railway operated successfully for more than sixty years. In the year 1977, the Company resolved to wind up the business and accordingly passed a resolution of winding up and obtained the order of winding up from Company Court of Calcutta High Court in Company Petition No. 623 of 1977. Consequently, the Official Liquidator was appointed with express



objective of disposing of the assets and movable and immovable properties of the Company and to pay off the creditors from the usufructs thereof. One Kedar Nath Fatehpuria was appointed as Official Liquidator of the Company. The respondent no. 7 claims to be the Power of Attorney holder of the Official Liquidator. In view of the difficulty faced by the Power of Attorney holder of the Official Liquidator in getting the boundary wall of the property of the Company constructed, the Official Liquidator filed C.W.J.C. No. 13599 of 2012, the said writ application was preferred by respondent no. 7. The above writ application was disposed of by a co-ordinate bench of this Court vide order dated 21.11.2014, in the following terms:

“No doubt, it is the case of the petitioner that a representation was filed before the Collector and up till now the Collector has not passed any order on the representation but in my view, when the facts pleaded in the writ petition have not been denied by the State, there is no hurdle before this court to issue direction to the respondents no. 4 and 5 to provide appropriate security to the petitioner/company or its authorized person and, accordingly, it is ordered that respondents no. 4 and 5 shall provide appropriate security to the petitioner/company or its authorized person in accordance with the rules within a period of one month from the date of receipt/production of copy of this order in respect of lands mentioned at Annexure -10 series to the writ petition. However, it is made clear that



petitioner should also approach to the respondents no.4 and 5 within two weeks from today raising his grievance annexing the Annexure-10 series to this petition. With the aforesaid observation/direction, this petition stands disposed of.”

However, subsequently, one Binay Kumar Singh filed a Civil Review No. 411 of 2016 for review of the order dated 21.11.2014 passed in C.W.J.C. No. 13599 of 2012, which was disposed of by a co-ordinate bench of this Court vide order dated 28.6.2017, as contained in Annexure 14.

Consequently, in view of the above mentioned direction of this Court, the Sub-Divisional Magistrate, Ara Sadar, vide order dated 21.6.2017 (as contained in Annexure 13), requested the SDPO, Ara to provide police force for construction of the boundary wall on the lands of Ara Sasaram Light Railway. Hence, the present writ application.

It is submitted by learned counsel for the petitioners that the petitioners purchased this land from Syed Askari Hadi Ali, Augustine Imam. In the C.S. Khatiyani the land was recorded in the name of Syed Imam, though substantive portion of land was taken by Ara Sasaram Light Railway Company, but, since the land was abandoned by the Railway, the land was purchased by the petitioners on various dates in 1979. They also claim to have obtained the order through Consolidation authorities in their favour and hence, they feel threatened by the



construction of boundary wall and order of SDM for deputation of police force. Learned counsel for the petitioners submits that in pursuance to the order dated 21.11.2014 passed in CWJC No. 13599 of 2012 security has been provided. The company petition is still pending. Hence, the State Government has no role to play in the matter. By dismissal of the review application, the order passed by the writ court has become absolute since it has not been challenged.

Mr. Ashok Kumar Keshari, learned counsel for the respondent Railway submits that the Company Court i.e., the Calcutta High Court is the *custodia legis* of the property in question and the petitioners have purchased the land from the person who has no title.

Mr. Rajendra Narain, learned Senior Counsel appearing for the Company, submits that the liquidation proceeding is going on since 1977. The Company Petition no. 623 of 1977 is still pending before the Company Court of Calcutta High Court and this fact has not been controverted by the learned counsel for the petitioners, hence, the present writ application is absolutely misconceived and not maintainable and in view of the provision under Section 446(2) of the Companies Act and if the petitioner is having any grievance, redressal of the same would be maintainable only before the Company Court of Calcutta High Court. It is further submitted that in pursuance to the liquidation order, one Kedar Nath Fatehpuria was appointed as Official Liquidator of the Company.



The lands of the company have been sold in public auction after obtaining due permission from the Company Court. Earlier, the State of Bihar had also made its claim before the Company Court of Calcutta High Court over the disputed land but did not succeed. The order of the Company Court was also affirmed by the Hon'ble Supreme Court. Subsequently, the Government of Bihar initiated a revenue proceeding in Case No. 1 of 2009 before the Survey Settlement Superintendent, Bhojpur/Rohtas, for rectification of the survey register with respect to the lands in question. The Survey Settlement Superintendent, Bhojpur/Rohtas, under its order dated 19th February, 2009, directed to initiate proceeding under Rule 467 of the Bihar Survey & Settlement Manual, 1959, for correction of the entry. Feeling aggrieved, the Official Liquidator of the Company, approached this Court under Article 226 of the Constitution of India, in C.W.J.C. No. 9790 of 2008, to challenge the aforesaid order dated 19th February, 2009. The writ application was contested by the State of Bihar. The learned Single Judge, after considering the provision stipulated under Rule 467 of the Manual and the factum that the winding up proceeding is pending before the Company Court, i.e., Calcutta High Court, allowed the writ application and set aside the aforesaid order dated 19th February, 2009 made by the Superintendent of Survey and Settlement, Bhojpur/Rohtas, in Case No. 1 of 2009. The learned Single Judge also held that the State Government, if it had any grievance, it was required to



be ventilated before the Calcutta High Court (Company Court). Feeling aggrieved, the State Government preferred appeal vide L.P.A. No. 683 of 2011. A Division Bench of this Court, fully agreed with the order of the learned Single Judge, by holding that once the matter was settled in the year 2000, the Superintendent of Survey and Settlement could not have reopened the matter. Further, the Company being in the process of winding up, the Company Court is the *custodia legis* of the assets of the Company. Hence, without the permission of the Company Court, no proceeding could have been initiated against the Company which is under the process of winding up. Consequently, the Division Bench, vide order dated 12.7.2013 dismissed the appeal *in limine*.

It is further submitted that the order of the Sub Divisional Magistrate dated 21.6.2017 has been passed in pursuance to the order of this Court dated 21.11.2014 passed in C.W.J.C. No. 13599 of 2012 and hence any interference with the said order will amount to modification of the order passed by this Court as the prayer for review of the said order has also been rejected by a bench of this Court. It is further submitted by Mr. Narayan that the Sale Deed, as contained in Annexure 1, clearly reflects that the land in question is occupied by M/s Martin Light Railway and the said Railway Company is going under liquidation but they have abandoned the land in question. Hence, the Sale deed suggests that the petitioners have purchased the land which is under liquidation.



Considering the rival submissions of the parties, it is admitted fact that the Company in question is under liquidation and the Company Petition No. 623 of 1977 is still pending before the Company Court, hence, the Company Court is the *custodia legis* of the assets of the Company. Though the winding up proceeding was initiated through Company Petition no. 623 of 1977, under the Companies Act, 1956, which has been repealed by the Companies Act, 2013 (hereinafter referred to as '2013 Act') and the Company Petition has still not been transferred under sub-section (1) of Section 434 of 2013 Act to the Tribunal, hence, as per the second proviso to sub section (1) of Section 465 of 2013 Act, the provisions of Companies Act 1956, with regard to the power, jurisdiction, authority and functions of the Board of Company Law Administration and Court shall continue to apply. The Central Government in exercise of the powers under sub-section (1) and (2) of Section 434 of 2013 Act, published in the official Gazette by way of Notification, dated 7.12.2016, the Companies (Transfer of Pending Proceeding) Rules, 2016 (hereinafter referred to as "2016 Rules"). Rule 4 of the 2016 Rules stipulates the provision for pending proceeding relating to voluntary winding up, however, the said Rule 4 will come into force w.e.f. 1.4.2017. Hence, in the present case as per the second proviso to sub-section (1) of Section 465 of 2013 Act, the provisions of Companies Act, 1956 will apply since the Company Petition has not been transferred



to the Tribunal. Therefore, the remedy to the petitioners lies under the provisions of section 446(2) of the Companies Act, 1956 which reads as follows:

“446. Suits stayed on winding up order- (1)

(2) ³ The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being, in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company,

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 .] (65 of 1960 .)”

It clearly stipulates that the Court, which is winding up the Company, shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of any suit or proceeding by or against the company or any claim made by or against the company.

There is nothing on record which reflects that the petitioners ever submitted any petition or claim before the Company Court of Calcutta High Court, hence, the writ application is absolutely misconceived. The



writ application is also not maintainable in view of the fact that the issue has been settled, when the Government of Bihar tried to make correction in the revenue records through Case No. 1 of 2009, wherein, the Superintendent of Survey and Settlement, Bhojpur/Rohtas, passed an order on 19.2.2009, directing to initiate proceeding under Rule 467 of the Bihar Survey and Settlement Manual, 1959, for correction of the entry and the same was challenged in the writ application and the writ court held that once the claim of the State Government was rejected by the Company Court, the State Government could not have initiated the proceeding and the said order in the writ application was upheld by a Division Bench in Letter Patent Appeal.

The writ application of the petitioners is also not maintainable in view of the fact that earlier the petitioners filed writ application being C.W.J.C. No. 10833 of 2005 which stood dismissed vide order dated 9.10.2013 for non-compliance of the peremptory order dated 16.8.2013, as contained in Annexure 11 series.

So far as the order of Sub-Divisional Magistrate dated 21.6.2017 is concerned, the same has been passed in pursuance to the order passed by a bench of this Court dated 21.11.2014 in C.W.J.C. No. 13599 of 2012, hence, this Court finds no infirmity in the said order. C.W.J.C. No. 9202 of 2016, Shivpujan Prasad and Others Vs. The State of Bihar & Ors, was also filed on the earlier occasion, seeking similar



relief, which was dismissed by this Court vide order dated 24.3.2017 as contained in Annexure A to the counter affidavit filed on behalf of respondent no. 4. The issue/grievance has thus been finally adjudicated earlier, by this Court.

Under such circumstances, in considered opinion of this Court, this Writ application is absolutely misconceived, frivolous and not maintainable. It is, accordingly, dismissed but without costs.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

