

**0IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.17767 of 2010**

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1. Mohammad Yusuf S/O Late Reyazul Haque R/O Vill.- Sumera Afzalpur Madu Alias Bara Sumera, P.O.- Sumera, P.S.- Kurhani, Distt.- Muzaffarpur
  2. Iftekhharul Haque S/O Late Md. Hasanjan R/O Mohalla- Mithanpur Lala Alias Mithanpur, P.S.- Mithanpur, Distt.- Muzaffarpur
  3. Imamul Hasan S/O Late Md. Hasanjan R/O Mohalla- Mithanpur Lala Alias Mithanpur, P.S.- Mithanpur, Distt.- Muzaffarpur
  4. Ekramul Hasan S/O Late Md. Hasanjan R/O Mohalla- Mithanpur Lala Alias Mithanpur, P.S.- Mithanpur, Distt.- Muzaffarpur
  5. Salima Khatoon W/O Md. Sharif R/O Mohalla- Sadpura, P.O.- Ramna, P.S.- Quazi Mohammadpur Town And Distt.- Muzaffarpur
  6. Maimuna Khaton W/O Md. Akhtar R/O Vill.- Sumera Afzalpur, P.O.- Sumera, P.S.- Kurhani, Distt.- Muzaffarpur
  7. Noorjahan W/O Hafiz Md. Salim R/O Vill.- Pana Chhapra, P.O.- Motipur, P.S.- Motipur, Distt.- Muzaffarpur
  8. Nagina Khatoon D/O Late Md. Firoz R/O Vill.- Pana Chhapra, P.O.- Motipur, P.S.- Motipur, Distt.- Muzaffarpur And As Husband Of Late Mehrunnisa

.... .... Petitioners

Versus

Land Acquisition Officer, Muzaffarpur

.... .... Respondent

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**Appearance :**

For the Petitioner/s : Mr. MD.ANIS AKHTAR

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 10-02-2017**

Heard Mr. Anish Akhtar, learned counsel  
appearing for the petitioners.

The plaintiffs are the petitioners in this  
application , questioning the legal sustainability of the impugned  
order by which the learned court below has directed the plaintiff to  
pay the ad valorem court fee after accepting the report by the  
Seristedar in that regard.



The copy of the plaint has been annexed with this application at Annexure-1. From the averments made in the plaint, it becomes transparent that the plaintiffs' relief has been for declaration of the entitlement of the plaintiffs to the compensation amount in the land acquisition proceeding. In the relief portion , however, no relief with regard to the direction to the sole defendant – Land Acquisition Officer for payment of the said amount to the plaintiffs has been made. From the averments in the plaint it is however apparent that the said relief is implicit in the main relief pertaining to the entitlement of the plaintiff for the aforesaid amount but the relief factually sought for in the plaint has been worded in such a manner which only exposes the dexterity of drafting in order to make out a case of only a declaratory suit. The principle in this regard has been laid down by the Full Bench of this Court in ***Mt.Rupia Vs. Bhatu Mahton & Ors*** , ***AIR (31) 1944 Patna 17*** where their lordships have laid down as follows:

*“...It has been laid down over and over again by all the High Courts in India that the dexterity of the person drawing up the pleadings avoiding the use of certain words in the plaint, which would make the relief a consequential one, should not determine the amount of court fee payable on the plaint. The court*



*fee is dependent not on the form of the pleadings, but on the real substance of the relief claimed. In this connection the following observations of Sir Lawrence Jenkins in the well known case in 39.Cal.704 may be quoted:*

*“ It is a common fashion to attempt an evasion of court fee by casting the prayers of the plaint into a declaratory shape. Where the evasion is successful it cannot be touched, but the device does not merit encouragement or favour.”*

After considering the submissions on the anvil of the settled principle laid down by the Full Bench in Mt.Rupia (Supra), this Court does not find that the learned court below has committed illegality in passing the impugned order. It could not be shown on behalf of the plaintiffs that the plaintiffs do not require the further relief for realization of the amount of compensation to which the plaintiffs would be held entitled.

This application, sans merit, is accordingly dismissed.

**(V. Nath, J)**

Nitesh/-

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