

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10921 of 2010

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Shatrughan Sah, S/O Late Jagan Sah, R/O Village Jalalpur, P.S. Saraiya, District-
Muzaffarpur, Bihar.

.... Petitioner/s

Versus

1. The State Of Bihar Through Collector, Muzaffarpur.
2. Circle Officer, Block Saraiya, District- Muzaffarpur.
3. Consolidation Officer, Jaintpur Camp, Saraiya, Muzaffarpur.
4. Superintendent Of Police, Muzaffarpur.
5. Officer In Charge, P.S. Saraiya, Muzaffarpur.
6. Md. Akabar Ali, S/O Late Kitab Ali, R/O Village Jalalpur, P.S. Saraiya,
District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. MANOHAR PD.SINGH
		Mr. Sunil Kumar
For the State/-		Mr. NUtan Sahay
For the Respondent/s	:	Mr. Manoj Kumar

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 02-03-2017**

Heard learned counsel for the petitioner as well as learned
counsel for the respondent no. 6 and also Learned AC to AAG-XII
appearing for the State.

2. This writ petition has been filed for quashing the order
dated 20.03.2010 passed by the Additional District Judge-IV,
Muzaffarpur, in Misc. Appeal No. 06 of 1999 by which and
whereunder he affirmed the order dated 24.02.1999 passed in Title suit
no. 51 of 1998 by the Munsif, Muzaffarpur, who rejected the
injunction petition filed on behalf of the petitioner under order 39



Rules 1 and 2 and 151 of the C.P.C.

3. The petitioner and others filed Title suit no. 51 of 1998 against the respondents for declaration of their right and title and possession over cadastral survey plot no. 119 measuring an area of 3 decimals and cadastral survey plot no. 120 measuring an area of 9 decimals of village Jalalpur, P.S. Saraiya, District- Muzaffarpur. The case of the petitioner and others before the court below was that the C.S.P Nos. 119 and 120 were recorded in the name of their ancestors and they got the aforesaid plot through exchange under family arrangement but 3 decimals area of cadastral survey plot no. 119 and 1.5 decimals area of C.S.P plot no. 120 were wrongly recorded as Rasta in course of consolidation proceeding. It is further case of the petitioner that in course of consolidation proceeding, without consent and without knowledge of the petitioner, Village Advisory Committee passed a resolution to carve out Rasta for widening the existing plot no. 124, taking some lands from the cadastral survey plot nos. 119 and 120 and, thereafter, consolidation authorities without giving any notice to the petitioner prepared Chakbandi Khatian, taking the above stated area of C.S.P plot nos. 119 and 120. It is further case of the petitioner that the petitioner got constructed his pucca house on the aforesaid area but, subsequently, the concerned local authorities in collusion with respondent no. 6 initiated a proceeding under section



133 of the Cr.P.C in which the learned S.D.M., West Muzaffarpur, passed an order for demolition of the house of the petitioner from C.S.P plot nos. 119 and 120. The aforesaid order was challenged before this Court in Cr. Misc. No. 12322 of 1998 but this Court vide order dated 11.03.2010 disposed of the aforesaid Cr. Misc. No. 12322 of 1998, giving liberty to the petitioner to seek remedy before the competent Civil court but before disposal of the aforesaid Cr. Misc. No. 12322 of 1998, petitioner had already filed Title suit no. 51 of 1998. The petitioner filed injunction petition before the learned Munsif, West Muzaffarpur, praying therein to restrain the respondents/ defendants from demolishing his house situated on the disputed plot but learned Munsif disposed of the aforesaid injunction petition on the ground that this Court had already stayed the order of S.D.M and, after that, petitioner preferred Misc. No. 06 of 1999, which was, too, dismissed by the learned Additional Sessions Judge-IV, Muzaffarpur.

4. The contention on behalf of the petitioner is that the petitioner proved his prima facie case, balance of convenience as well as irreparable loss but, even then, both the courts below refused to restrain the defendants/ respondents from demolishing the house of the petitioner. It is further submitted that the learned S.D.M, who passed the order under section 133 of the Cr.P.C, found the house of



the petitioner on disputed area and, therefore, it cannot be said that the balance of convenience was not in favour of the petitioner. He further submits that it is an admitted position that prior to consolidation proceeding, the disputed area was recorded in the name of ancestors of petitioner but the aforesaid disputed area was taken up for widening the road in course of consolidation proceeding. He further submits that there was nothing before both the courts below to show that any notice was issued by consolidation authorities prior to preparation of Chakbandi Khatian of the disputed area and, therefore, the aforesaid fact also goes to show that petitioner has a very good prima facie case. It is further submitted that if the house of the petitioner is demolish from the disputed area, the petitioner shall suffer irreparable loss as his mental agony cannot be compensated in terms of money.

5. On the other hand, learned counsel appearing for the respondent no. 6 refuted the above stated submissions, arguing that the learned S.D.M., West Muzaffarpur, found the disputed area as Rasta, while he was making inquiry under section 133 of the Cr.P.C and the aforesaid fact goes to show that the disputed area is being used by the villagers as Rasta but the petitioner having encroached the disputed area got constructed his house and, therefore, it cannot be said that the balance of convenience is in favour of the petitioner. He further submits that it is well settled principles of law that if one of the



ingredients of order 39 Rules 1 and 2 is lacking, then in that circumstance, no relief can be granted under order 39 Rules 1 and 2 of the C.P.C.

6. It is an admitted position that the disputed area was recorded in the name of ancestors of the petitioner prior to consolidation proceeding, and some parts of C.S.P plot nos. 119 and 120 were taken for widening the road . It is also an admitted position that prior to the consolidation proceeding, the road in question was existing on C.S.P plot no. 124 and the part of plots nos. 119 and 120 were taken for widening the road during consolidation proceeding. However, learned S.D.M, who made an inquiry under section 133 of the Cr.P.C, found the house of the petitioner over the disputed area. The aforesaid facts goes to show that even at the time of initiation of proceeding under section 133 of the Cr.P.C, the petitioner was in possession of the disputed plot. Therefore, it cannot be said that the disputed area is being used by the villagers as Rasta rather it is an admitted case of the parties that the Rasta was existing on C.S.P plot no. 124 and C.S.P plot no. 124 was being used by the villagers as Rasta. Therefore, in my view, the petitioner has prima facie case as well as balance of convenience. So far as the irreparable loss is concerned, learned counsel appearing for the petitioner rightly submitted that if the house of the petitioner is demolished, the



petitioner shall suffer mental agony, which cannot be compensated in terms of money.

7. In view of the aforesaid discussions, the impugned order dated 20.03.2010 passed in Misc. Appeal No. 06 of 1999 by the court of Additional District Judge-IV, Muzaffarpur, is hereby, quashed and the petition filed on behalf of the petitioner under order 39 Rule 1 and 2 of the C.P.C is allowed and, accordingly, the respondents are restrained from demolishing the house of petitioner till disposal of Title suit no.51 of 1998. However, it is made clear that the respondents/ defendants and other villagers may use the Rasta which is existing on C.S.P Plot no. 124 without any interruption and if any construction is found on C.S.P plot no. 124, the concerned authorities may take action against the encroachers in accordance with law.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
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