

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1143 of 2015

IN

Civil Writ Jurisdiction Case No. 2051 of 2014

- =====
1. Sri Kamta Sakhi Math And Mahabir Asthan at Mahabir Asthan, Main Road , East Gandhi Maidan , P.S. Gandhi Maidan, Patna, District Patna through Ravi Prakash Verma- Sevait.
 2. Ravi Prakash Verma son fo Late Mahant Awadh Prasad Verma @ Mahant Awadh Bihari Verma, resident of Mahab ir Asthan , Main Road, East Gandhi Maidan, P.S. Gandhi Maidan Patna District Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Collector, Patna.
2. The Collector, Patna.
3. The D.C.L.R. , Patna
4. The Circle Officer, Sadar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Pankaj Maijorwar
For the Respondent/s	:	Mr. AAG6- Anjani Kumar

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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: 03-08-2017

Heard learned counsels for the parties.

The original writ petitioners are in appeal before this Court. They moved this Court for following reliefs:

(i) For issuance of writ in the nature of certiorari for quashing the order dated 15.1.2014 passed by Collector, Patna in Land Encroachment Appeal No.3 of 1998-99 by which he has allowed the Encroachment Appeal as filed by the Circle Officer, Patna Sadar.

(ii) For issuance of writ in the nature of certiorari for quashing the notice dated



20.1.2014 issued under the signature of Circle Officer, Sadar Patna (Respondent no.4) by which he has directed the petitioner to remove the alleged encroachment from the disputed land within twenty four hours.

(iii) Respondent no. 4 may be commanded to remove its illegal construction made on the lands of petitioner as described in paragraph no.4 of this petition without any further delay and not to make any further encroachment over any part of the land.

(iv) For issuance of writ in the nature of mandamus commanding the official respondents to not disturb the peaceful possession of the petitioners till final disposal of the instant writ application.

(v) For any other writ/writs, order/orders for which petitioner deemed entitled too.

Without going into the details, which are not relevant in the instant case, it would be sufficient to note that the writ petitioners have earlier filed a title suit, bearing Title Suit No. 28 of 1988 / 23 of 1994 for declaration of their title and possession with respect to the land in question. They, having lost before original court, preferred a title appeal, bearing Title Appeal No. 145 of 1994. It is not in dispute that the petitioners had earlier filed application for injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure, for restraining the respondents from alienating or changing the nature of the suit property and from disturbing the appellant from the peaceful possession of the property. The said prayer for injunction was refused by the Appellate Court, vide order, passed on 26.03.2014.



The said order, rejecting the application for injunction, is available on record as Annexure – J to the supplementary counter affidavit filed before the Writ Court.

Thereafter, the present proceeding has cropped up, because the Circle Officer issued a notice, calling upon the petitioners-appellants to vacate the encroached land. The Collector, Patna, vide its order, dated 15.01.2014, passed in Land Encroachment Appeal No. 3 of 1998-99, set aside the earlier order passed by the DCLR and then allowed the encroachment appeal. The writ petitioners-appellants, being aggrieved of the said order, moved this Court in writ.

Before us, it has been strenuously argued by the learned counsel for the appellants that these petitioners are in possession over the land and certain records, such as holding, revenue receipts etc., were issued in favour of the appellants.

The petitioners-appellants, in fact, want us to protect their possession over the land in question. We are in agreement that the writ petition as well as the appeal is thoroughly misconceived. The petitioners-appellants have lost before the original court of competent jurisdiction in the title suit and even their application for injunction was rejected in the appeal, which are admitted position.

In this view of the matter, passing any order, directing the possession of the petitioners-appellants, in exercise of discretionary jurisdiction of this Court under Article 226 of the



Constitution, would not be justifiable.

There is no merit in the appeal. It is, accordingly,
dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	07.08.2017
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