

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48049 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- EASTCHAMPARAN
(MOTIHARI)

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Anil Anal, Son of Jivanand Ojha @ Jivandan Ojha, Resident of Mohalla- Agarawa,
P.O- Motihari, P.S- Mothihari town, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajanikant Pathak Son of Valmiki Pathak Resident of Ambika Nagar, P.S-
Banjariya, Dsitrict - East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Singh, Advocate.

For the Opposite Party/s : Mr. Aditya Narayan Singh 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.09.2016 passed by learned Additional Sessions Judge-II, East Champaran, Motihari, in Criminal Revision No. 85 of 2013/84 of 2015 by which the learned Additional Sessions Judge-II has set aside the order dated 02.03.2013 passed by learned Sub Divisional Judicial Magistrate, Sadar, Motihari, in a proceeding under Section 133 Cr. P.C. bearing Case No. 518-M of 2012 directing the opposite party No. 2 to remove the encroachment from the disputed land within 30 days. The learned Additional Sessions Judge-II, remitted back the matter for passing fresh order after taking evidence in the matter.



2. Heard learned counsel for the petitioner and learned counsel for the State.

3. Counsel for the petitioner has submitted that order passed by the Magistrate has become absolute since the opposite party No. 2 did not file his show cause in-spite of several adjournments. The opposite party No. 2 has appeared but has not denied about encroachment, and, therefore, the Magistrate has proceeded further.

4. The Additional Sessions Judge has mentioned in the impugned order that there was no any evidence on record except the report of Anchal Adhikari which was not clear whether the land has been acquired.

5. Learned Additional Sessions Judge after perusing the order passed by the learned Magistrate has found that the same has been passed without taking proper evidence and giving opportunity to the opposite party No. 2 to adduce evidence. The Revisional Court has set aside the order of learned Sub Divisional Judicial Magistrate, and directed the court below to pass fresh order in accordance with law after taking evidence.

6. This Court does not find any illegality in the impugned order dated 14.09.2016 passed by the learned Additional Sessions, Motihari, East Champaran.

7. This Criminal Miscellaneous application is



accordingly dismissed.

8. The learned Magistrate is directed to pass fresh order in accordance with law by giving short adjournment to the parties. The court below will not allow Opposite Party No. 2, to delay the disposal of case.

9. The Opposite Party No. 2 will adduce evidence within time fixed by the court below. The court below will make efforts to pass final order in the case within a period of six months from the date receipt of this order.

10. The District and Sessions Judge, East Champaran, Motihari will communicate this order to the court concerned for compliance.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13/09/2018
Transmission Date	13/09/2018

