

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.714 of 2016
IN
Civil Writ Jurisdiction Case No. 4514 of 2013

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Rakesh Kumar Sharma, S/o Late Ramanand Sharma, Resident of Village - Sinduari,
P.S. - Konch in the District of Gaya.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
3. Deputy Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
4. The Director, Student and Youth Welfare, Art, Culture and Youth Department (Archaeological Directorate), Government of Bihar, Patna.
5. Collector, Gaya.
6. The Union of India through its Secretary, Ministry of Culture C-Wing, Shastri Bhawan, New Delhi.
7. The Director, Archaeological Survey of India, New Delhi.

.... Respondent/s

with

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Letters Patent Appeal No. 642 of 2016

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1. Sangeeta Devi wife of Sri Kamlesh Prasad, resident of Village- Chaita, Police Station- Tekari and District- Gaya.
2. Manoj Sharma @ Manoj Kumar Sharma son of Late Bindeshwar Sharma, resident of Village- Panchmahala, Police Station- Tekari, District- Gaya.
3. Sita Devi wife of Ramashrey Singh, resident of Village- Mahmanna, Police Station- Tekari District- Gaya.
4. Sunaina Devi wife of Shyamakant Mishra, resident of Village- Kurmawana, Police Station- Konch and District- Gaya.
5. Pramod Kumar son of Bamdeo Singh resident of Village- Chainpur, Police Station- Konch and District- Gaya.
6. Nawal Devi wife of Uday Sharma resident of Village- Bhawarpur, Police Station- Tekari and District- Gaya.
7. Nilam Devi @ Lilam Devi wife of Ramanuj Sharma, resident of Village- Bhawarpur, Police Station- Tekari and District- Gaya.
8. Bimla Devi wife of Umakant Mishra, resident of Kurmawan, Police Station- Konch and District- Gaya.
9. Dahendra Sharma son of Late Raj Leela Singh resident of Village- Bhawarpur, Police Station- Tekari and District- Gaya.
10. Kapil Kumar Singh son of Shambhu Sharan Singh resident of Village- Ahiyapur, Police Station- Konch and District- Gaya.
11. Bal Krishna Mishra son of Late Rudradutta Mishra resident of Village- Kachnama, Police Station- Makhdumpur, District- Jehanabad.
12. Ravindra Singh @ Ravindra Sharma son of Late Deo Narayan @ Deo Nayan Singh, resident of Village- Ahiyapur, Police Station- Konch and District- Gaya.



13. Sidheshwari Devi wife of Madan Prasad Sharma resident of Village- Bhimpur Manjhiyawan, Police Station- Konch and District- Gaya.
14. Basanti Devi wife of Tribhuwan Singh resident of Village- Bhimpur Manjhiyawan, Police Station- Konch and District- Gaya.
15. Munni Devi wife of Anil Kumar, resident of Village- Bhawarpur, Police Station- Tekari and District- Gaya.
16. Sunil Kumar son of Ram Bilas Sharma resident of Village- Panchmahala, Police Station- Tekari and District- Gaya.
17. Savitri Devi wife of Nawal Kishore Singh resident of Village- Chaita, Police Station- Tekari and District- Gaya.
18. Sri Kewal Singh son of Late Nandan Singh resident of Village- Chaita, Police Station- Tekari and District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary to the Govt. of Bihar, Department of Art, Culture & Youth Affairs (Archeological Directorate, Bihar, Patna).
3. The Director, Archeological Directorate, Govt. of Bihar, Patna.
4. The District Magistrate, Gaya.
5. The Sub Divisional Officer, Tekari, Gaya.
6. The Circle Officer, Tekari, District- Gaya.

.... Respondent/s

Appearance :

(In LPA No.714 of 2016)

For the Appellant/s : Mr. P.K. Shahi, Sr.Adv.
Mr. Manish Dhari Singh, Adv.
Mr. Manish Kumar No.-II, Adv.
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13
Mr.Ravi Kumar, AC to AAG-13
Mr.Tej Pratap Singh, AC to AAG-13

(In LPA No.642 of 2016)

For the Appellant/s : Mr. P.K. Shahi, Sr.Adv.
Mr. Manish Kumar No-2, Adv.
For the State : Mr. Pratik Kumar Sinha, AC to GA-V.
For the N.P., Tekari : Mr. Piyush Lall, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 09-07-2018

These two Letters Patent Appeals are arising out of a
common judgment dated 12.02.2016 passed in Civil Writ Jurisdiction



Case No.4514 of 2013 and Civil Writ Jurisdiction Case No.8341 of 2013.

2. The writ petitioners-appellants are aggrieved by the impugned judgment of the learned Writ Court whereby and whereunder the learned Writ Court has rejected the contention of the petitioners that action taken by the State-respondents in the matter of issuance of the notifications under Section 3(1) of the Bihar Ancient Monuments and Archaeological Site, Remains and Art Treasure Act, 1976 (hereinafter referred to as the 'Act') in October, 1993 and the subsequent notifications declaring the Qila and the surrounding areas as protected monument or archaeological site without acquiring the land in question in terms of the Land Acquisition Act, 1894 and without paying compensation thereof to the land owners like the petitioners is per-se illegal, arbitrary and bad in law. This contention of the petitioners has been rejected by the learned Writ Court after taking note of the relevant provisions of the Act such as Sections 3, 12, 18, 19 and 25 which have been quoted in the impugned judgment for a ready reference.

3. The learned Writ Court held that the provisions of the Act empowers the State to impose certain conditions of restricted use of the land in the protected area. According to sub-section (1) of Section 18 of the Act no person, including the owner or occupier of a



protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilize such area or any part thereof in any other manner without the permission of the State Government. Proviso to Section 8 of the Act, however, carves out an exception in saying that “nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for the purpose of cultivation if such cultivation does not involve the digging of more than one foot of soil from the surface. Further under sub-section (2) of Section 18, the State government is empowered to direct removal of any building constructed by any person within a protected area in contravention of the provisions of sub-section (1).

4. The protected area has been defined under Clause (j) of Section 2 of the Act, which reads as under:-

“protected area” means any archaeological site and remains which is declared to be a protected area by or under this Act.”

5. The learned Writ Court found that purpose for imposition of certain conditions regarding restricted use of land is obvious from the aim and object of the Act as it is for preservation of ancient monument and archaeological sites and remains. The submission of learned counsel representing the petitioners that if the



lands of the petitioners are required to be declared as protected sites then the State government should necessarily acquire the land under the Land Acquisition Act in the interest of public purposes has been rejected by the learned Writ Court.

6. We find that the learned Writ Court has refused to accept the submission of the petitioners that in the context of provisions contained in Sections 4 and 19 of the Act, the word 'may' appearing in those provisions should be construed to mean as 'shall.' The decision of the Hon'ble Supreme Court rendered in the case of **D.K.Basu Vs. State of West Bengal** reported in **(2015) 8 SCC 744** on which reliance was placed on behalf of the petitioners has also been discussed with reference to the provisions of the Act and the learned Writ Court held that these provisions do not mandatorily require or compel the State Government to acquire the protected area under the provisions of the Land Acquisition Act.

7. In course of hearing of the Letters Patent Appeals in fact vide order dated 08.03.2018 after taking note of the issues involved in this case a prima facie view was taken that in terms of Annexure-5 to the writ application, the petitioners are at least entitled to the limited relief of carrying out agricultural activity in the area. The District Magistrate, Gaya was called upon to clarify the position as to why agricultural activity cannot be permitted to be carried out by



the appellants in pursuance to the right conferred vide Annexure-5. By the same order, the State Government was directed to indicate as to whether they want to acquire the land if so how much compensation can be assessed and paid. This prima facie view was taken as it was informed to the Court that where agricultural activities are being carried out, a garden is to be established to beautify the heritage site.

8. In response to the order passed by us the District Administration of Gaya and Municipal Corporation, Tekari came with a plea denying the right, title and possession of the appellants and it is their case now that the land belongs to the Municipal Corporation. This Court has been also informed that the Municipal Corporation has filed a civil suit seeking declaration of their title. This Court made certain observations in the order dated 08.03.2018 wherein the prima facie views were taken and hearing of the matter was postponed. Relying upon a judgment of the Hon'ble Supreme Court in the case of **Mandal Revenue Officer Vs. Goundla Venkaiah and another** reported in **(2010) 2 SCC 461** the State Government took a plea that it is a government land which is now under the jurisdiction and possession of the Municipal Corporation and, therefore, the appeal is liable to be dismissed. This Court was of the view that before making such a foundation no documentary evidence like land records or other materials have been produced based on which it is stated that the



lands belong to the government or it is a gairmajarua land which was transferred by the State government to the Municipal Corporation and the appellants have no right to the same.

9. After passing of the order dated 08.03.2018 when the matter was listed again on 12.03.2018, the Collector, Gaya, the Director of Archaeology, State of Bihar and Chief Executive Officer of Gaya Municipal Corporation were present and in course of interaction they submitted that there are various issues which need to be addressed and apprised to this Court. The Collector, Gaya sought time to file a detail affidavit with regard to the issues in question. This Court thereafter granted four weeks time to Collector, Gaya and the Director of Archaeology to file affidavit in consultation with the Collector, Gaya.

10. In the aforementioned background of the developments which took place in course of hearing of these appeals, a fifth supplementary counter affidavit has been filed on behalf of the Collector, Gaya (respondent no.5) on 02.05.2018. The supplementary counter affidavit reveals that pursuant to the statements made before this Court the respondents constituted a team for detailed enquiry with respect to the land in question which has been declared protected area under Section 3(3) of the Act. The constituted team is said to have made a detail enquiry into the matter on the basis of documents and



records available in the offices concerned. In course of enquiry, a notice was also sent to Mr. Rakesh Kumar Sharma (appellant in LPA No.714 of 2016) to furnish documents. A general notice was also issued by affixing the same at conspicuous places. The descendants of ex-landlady Rani Bhuneswari Kunwar were also intimated. In course of enquiry Mr. Rakesh Kumar Sharma and members of Tekari Quila Bachao Sarvadaliya Sangharsh Samiti appeared before respondent no.5 and furnished the documents. A copy of the detailed report submitted by the constituted team has been brought on record as Annexure- R5/14 to the supplementary counter affidavit.

11. We have perused the supplementary affidavit as well as the enquiry report attached with the said affidavit. The enquiry team has held that in fact at the time of vesting of the land in question the ex-landlady was not in Khas possession of the land, the nature of land is not horticultural as there is no concrete evidence to establish and corroborate the same. Questions have been raised as to doubtful Khas possession, occupancy right of ex-landlady and statements have been made that the appellant or the descendants of ex-landlady have not, so far, been able to produce either return form K (Land details) or form M (Rent roll) in support of their claim over the land in question during the course of enquiry.

12. In course of submission, Mr. P.K.Shahi, learned



senior counsel representing the petitioners has even though invited the attention of this Court towards third supplementary affidavit filed on behalf of the appellant in L.P.A. No.714/2016 controverting the findings recorded by the enquiry officer and simultaneously asserting his rights, title and possession over the land in question, the learned senior counsel fairly submits that he can well appreciate that sitting in its writ jurisdiction or in writ-appeal this Court would not go into the question of title, right and possession of the appellant(s) over the land in question and, therefore, he would not be looking for any such adjudications or declarations by this Court.

13. Mr. Sahi, learned senior counsel leading the arguments has however assailed the impugned order and submits that the petitioner-appellant cannot be restrained from going on the land and from indulging in agricultural activities. It is submitted that the State Government has developed garden over the land and certain constructions have also been made and boundary walls have been erected around the area and, therefore, those are likely to create hindrance in the agricultural activity of the petitioner-appellant. In course of hearing, at one stage, Director of Archaeology Survey expressed his view that the petitioner may be allowed to act in terms of Annexure-5 but without removal of the constructions and the boundary walls erected around the ancient monument and the



protected area. However, immediately thereafter learned counsel for the altogether 18 numbers of appellants in L.P.A. No.642 of 2016 demanded that because the appellants of this case are the purchasers from Mr. Rakesh Kumar Sharma (appellant in L.P.A. No.714/2016), they should also be allowed to carry on the agricultural activities on the land sold out to them. In the nature of the demand raised by the appellants in L.P.A. No.642 of 2016, the respondent authorities were not willing to accept such pleas because in their opinion it would open a pendor box of litigations and in fact the whole ancient monument and the protected area will get damaged and large number of persons who are claiming through the vendor Rakesh Kumar Sharma would come out with their independent claim of right, title and possession over the piece of land which are already covered under the notification in question and come under the definition of 'Protected Area'.

14. In other words, the respondents argue that by permitting 18 numbers of appellants to cultivate the land in question the respondent authorities would in fact recognize the transfers made by Mr. Rakesh Kumar Sharma which they cannot do against the interest of the State and larger public interest. Learned counsel representing the State has, therefore submitted that the appellants in L.P.A. No.642 of 2016 are only trying to get validated their



transactions through their writ petition which need not be allowed by this Court sitting in its' writ jurisdiction.

15. Having heard learned senior counsel representing the appellant in L.P.A. No.714 of 2016, learned counsel representing the appellants in L.P.A. No.642 of 2016 and learned AAG-13 assisted by learned AC to AAG-13 and upon going through the entire materials available on the record which have been discussed hereinabove, we are of the considered opinion that these cases involve serious disputes over right, title and possession of the appellants over the piece of land. There is also a dispute over the nature of the land as according to the respondents there is no sign of horticulture over the piece of land. The Municipal Corporation, Tekari has already filed a civil suit which is said to be pending in a court of competent jurisdiction where all such questions may be adjudicated after giving an opportunity to the parties to adduce their respective evidences. This Court is, thus, not willing to discuss the issues of right, title and possession in the present writ-appeal.

16. So far as the impugned judgment of the learned Writ Court is concerned, we find that the learned Writ Court is absolutely correct in appreciating the various provisions of the Act whereunder with aim and object to preserve the ancient monument and protected area as defined under the 'Act' the State Government



has been empowered to impose certain restrictions on the uses of the land. Proviso to sub-section (1) of Section 18 of the Act clearly mandates that only agricultural activities in the given manner may be permitted. The submission of the petitioners-appellants that if the State Government is developing a garden over the land in question then the government is required to acquire the land in question first and pay compensation to the petitioners cannot be accepted at this stage when the very right, title and possession of the petitioners-appellants have been seriously questioned by the State Government and those are matters pending for adjudication in the civil suit.

17. The interpretation given by the learned Writ Court to the effect that the statutory provisions do not mandatorily compel the State Government to acquire the land falling in the protected area before issuing a notification in terms of the Act is absolutely correct and we do not find any error in the view taken by the learned Writ Court. We are, therefore not willing to interfere with the impugned judgment.

18. Both the Letters Patent Appeals are, thus, disposed off with an observation that the parties will abide by the adjudications in civil suit and they are free to pursue their remedy for declaration of their right, title and possession as also any other claim with respect to the land in question before the appropriate court of competent



jurisdiction and in accordance with law.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.07.2018
Transmission Date	

