

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9634 of 2018

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Bhushan Dome, Son of Late Basudeo Ram, resident of Dharamshala Road,
Dome Tola at Rajgir, P.S. Rajgir, District Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Nalanda.
3. The Executive Officer, Nagar Panchayat, Rajgir, District Nalanda.
4. The D.C.L.R., Nalanda.
5. The Anchal Adhikari, Rajgir, District Nalanda.
6. The Tourist Information/ Coordinator, Rajgir at Nalanda.
7. Badal Kumar, Son of Rajendra Ram, resident of Virayatan Road More, Rajgir,
District Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Singh Tarun, Adv. Mr. Sanjeev Kumar Singh, Adv.
For the State	:	Mr. Sajid Salim Khan, S.C.-25

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-11-2018

Heard Shri Sanjeev Kumar Singh holding the brief of
Shri Awadhesh Kumar Singh Tarun, learned counsel for the
petitioner and Mr. Sajid Salim Khan, Standing Council for the
State.

The petition assails the notice issued by the Nagar
Panchayat, Rajgir through its Executive Officer calling upon the
petitioner to vacate the premises as it is being occupied by the
petitioner unauthorisedly for the purpose of running a toilet which



has been allotted to one Shri Badal Kumar for the year 2018-19.

The writ petition has been filed bringing on record certain facts whereunder the petitioner claims entitlement to continue to run the toilet as the same, according to him, is situate over Plot No.5027 measuring an area of 0.3 decimals of Rajgir Thana No. 485, District- Nalanda.

According to the petitioner himself, he had moved an application before the Information Officer, Tourism, Rajgir requesting him to allow the petitioner to run his toilet which was constructed by the State Government. This application is at page 22 of the paper book. This was therefore, clear admission on the part of the petitioner that the toilet had been constructed by the State Government. Accordingly, the aforesaid Officer proceeded to record the undertaking and granted permission to the petitioner to operate the said toilet.

It appears that in between, with regard to Plot No.5027 aforesaid the petitioner filed a settlement case and he was successful in obtaining an order in his favour in respect of Plot No.5027 of Khata No.333.

Taking help of the aforesaid declaration made, the petitioner has challenged the notice contending that he has



perfected his title over the said plot and consequently the impugned notice issued to the petitioner is unlawful and the petitioner cannot be evicted from the premises nor can he be asked to hand over the toilet to some other person as referred to in the notice.

In order to further substantiate the aforesaid submission the petitioner has brought on record that earlier also when action was sought to be taken through a public notice the petitioner had approached this Court by filing writ petition bearing C.W.J.C. No.5022 of 2006 in which orders were passed on 4th April, 2011 which is extracted herein under:

“Heard learned counsel for the petitioner and the State.

2. In compliance of the orders of this Court dated 30.3.2011 learned counsel for the petitioner has produced original of the land settlement parwana dated 16.6.1993 issued under the joint signature of the Circle Officer, Rajgir, Deputy Collector Land Reforms, Sub Divisional Officer, Biharsharif. Close perusal of the said certificate indicates that land measuring 3 decimals of plot no.5027 appertaining to khata no.333 in village Rajgir was settled with the petitioner pursuant to Settlement Case No.24 of 1992-93. In the counter affidavit the Circle Officer, Rajgir has not stated that no such Settlement Case No.24 of 1992-93 was ever initiated for settlement of the lands in question with the petitioner. He has also not stated in the said counter affidavit that the land settlement certificate dated 16.6.1993 is forged and fabricated. What he has stated in the counter affidavit is that certificate is illegal and the land receipts issued pursuant to the said certificate has not been



authorized by the competent officer.

Aforesaid statement of the Circle Officer, Rajgir does not indicate that genuineness of certificate dated 16.6.1993 has been doubted. In the circumstances, I am not inclined to rely over the contents of the counter affidavit until the certificate dated 16.6.1993 is held to be forged by the competent court of civil jurisdiction. Accordingly, this writ petition is disposed of granting liberty to the State respondents to seek declaration that the land settlement certificate dated 16.6.1993 Annexure-1 is forged and fabricated document, but until such declaration is made by the competent court of civil jurisdiction, petitioner should not be dispossessed from the lands in question.”

Again when an attempt was made to dislodge the petitioner through a public notice he filed writ petition bearing C.W.J.C. No. 4377 of 2012 in which an interim order was passed on 16.03.2012 that is extracted herein under :

“Learned counsel for the petitioner submits that earlier also land settlement Parwana dated 16.6.1993 issued by the revenue authority of the State has been sought to be disturbed with respect to 3 decimals of land of plot No. 5027 appertaining to Khata No. 333 in village Rajgir pursuant to Settlement Case No. 24 of 1992-93 by the respondent-authorities which was challenged by the petitioner in CWJC No. 5022/2006 in which by order dated 4.4.2011 this Court had held that genuineness of certificate dated 16.6.1993 cannot be denied by the authorities of the respondent State unless it is held to be forged by the competent Civil court and the said writ petition was disposed of granting liberty to the respondents to seek declaration that the land settlement certificate dated 16.6.1993 is forged and fabricated document and until such declaration is made by the competent Civil Court, the petitioner should not be



dispossessed from the land in question. It is urged that contrary to the order of this Court, a public notice has been issued for open bidding with respect to the land of the petitioner by the Nagar Panchayat, Rajgir as a Sairat.

Learned counsel for the State prays for and is granted four weeks time to file the counter affidavit in the matter.

In the meantime, the public notice dated 13.2.2012 pertaining to the land of the petitioner; in so far as it relates to item no. 6 shall remain stayed.

Put up in the “Urgent Matters” list on 13th April, 2012.”

The said writ petition, however, was dismissed for non-prosecution on 29th April, 2016 and the said order is at Annexure 9 to the writ application.

Having considered the aforesaid facts and having heard learned counsel for the respondent, we find that the previous writ petition stands dismissed for non-prosecution about 2 years back. In the aforesaid circumstances, assailing the impugned show cause notice would not be permissible keeping in view the background of the case and also the fact that in any event the petitioner is claiming title over the land apart from the allotment of the toilet then it is open to him to avail of any such common law remedy or such other statutory remedy that may be available to him for the purpose of redressal of his grievances as we are of the considered opinion



that the writ petition in the above background challenging the earlier show cause notice is not entertainable.

The writ petition is rejected.

(Amreshwar Pratap Sahi, CJ)

(Jyoti Saran, J)

Bibhash/

AFR/NAFR	
CAV DATE	NA
Uploading Date	20.11.2018
Transmission Date	NA

