

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7418 of 2019

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Murari Mahto, Son of Late Suresh Mahto, Resident of Village- Bhadas, P.S.-
Muffasil (Khagaria) District- Khagaria, At present residing at Mohalla-
Baluahi, Ward No. 4, P.S. and District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary Revenue Dept. Govt. of Bihar, Patna.
2. The Divisional Commissioner, Munger, Division, Munger.
3. The Collector-cum-District Magistrate, Khagaria.
4. Sub-Divisional Officer, Khagaria.
5. District Welfare Officer, Khagaria.
6. Deputy Collector Land Reforms, Khagaria.
7. Circle Officer, Khagaria, District- Khagaria.
8. Executive Engineer, Rural Engineer Organization Works Division-2, Khagaria.
9. Md. Sahabuddin, Son of Nasim Mian, Resident of Nala Road, P.S. and District- Khagaria.
10. Md. Sakir Son of Mohammad Miyan, Resident of Thana Road, P.S. and District Khagaria, Both Secretary and Dy. Secretary respectively of Anuman Islahul Musalaimin of Khagaria, P.S. and District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dronacharya
For the Respondent/s	:	Mr. Subash Chandra Yadav (GP 15)
		Mr. Sangha Mitra Ghosh, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 18-04-2019 Heard learned counsel for the parties.

The dispute relates to a piece of land appertaining to
Khata No. 06, Plot No. 169 and *Tauzi* No. 575, ad-measuring 11
Katha 10 *dhur*, at Khagaria.

The petitioner raised the dispute before the authorities



when the State-respondents were trying to erect a boundary wall around the said land treating the same to be a *Kabristan* (graveyard). It was the petitioner's claim, however, that the land belonged to him.

The claim of the petitioner was subsequently considered under the provisions of the Bihar Land Disputes Resolution Act, 2009, and the dispute went finally up to the Bihar Land Tribunal.

A learned Member (Judicial) of the Tribunal by an order, dated 16.01.2017, passed in B.L.T. Case No. 107 of 2014, has rejected the petitioner's claim on the ground that he could not produce any evidence, documentary or oral, to establish the claim of his title or possession over the disputed land. At the same time, the Tribunal has recorded in the order, that there was no material to show that the land, in question, was being used as a *raiyaatiland*. The said order of the Tribunal is being assailed in the present writ application.

From the order of the Tribunal, it transpires that the learned Member (Judicial) of the Tribunal, had himself inspected the disputed land in the presence of the petitioner and the persons belonging to minority community, before recording the findings, which he has recorded.



Mr. Dronacharya, learned counsel, appearing on behalf of the petitioner, assailing the impugned order, has submitted that the Tribunal has made out a third case, which was not permissible. He contends that the Tribunal was required to consider the legality of the petitioner's claim of his title over the disputed land.

Mr. Dronacharya has, however, admitted that the dispute involves complex questions of title and possession, which can be adjudicated only by a competent court of civil jurisdiction.

On perusal of the impugned order, I find that the claim raised by the petitioner can be adjudicated only by a competent court of civil jurisdiction by filing a suit.

This application is, thus, disposed of with a liberty to the petitioner to file a suit, seeking declaration of his title over the disputed land. Any finding recorded by the Tribunal in the impugned order, shall not prejudice the petitioner's case before the Trial Court, if any suit is filed.

Before I part with, I must take note of certain observations made by the learned Member (Judicial) of the Bihar Land Tribunal. He has recorded that the disputed land is full of garbage and filth, and has not been used as *Kabristan* for



several decades. I do not intend to comment, at this stage, about the correctness of the said finding, which could be looked into at appropriate stage by the Trial Court, if any suit is filed. I, however, observe that presence of garbage and filth is bad for environment and health and, therefore, I direct the District Magistrate, Khagaria, to ensure that the garbage and filth are removed from the said land forthwith. It appears that the said land has been duly demarcated and boundary wall around the land has already been raised. The Court expects the State-Respondents to proceed in right earnest and implement this order.

Let a copy of this order be communicated to the District Magistrate, Khagaria.

(Chakradhari Sharan Singh, J)

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