

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24659 of 2018

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Madhuri Kumari Wife of Kumar Om Prakash, Resident of Village Mauji Than
Singh, Ward no 4, P.S. Bakhari, District- Begusarai

... .. Petitioner

Versus

1. The State Of Bihar through the District Magistrate-cum-Collector, Begusarai
2. The Superintendent of Police, Begusarai
3. The Sub- Divisional Officer-cum- Sub Divisional Magistrate, Bhakhari,
District- Begusarai
4. The S.H.O. Bakhari Police Station, District- Begusarai
5. The Superintendent, Bihar State Board of Religious Trust, Vidyapati Marg,
Patna-800001

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Mishra, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad -Sc8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 17-07-2019 A supplementary affidavit showing service of Dasti

notice on the Bihar State Hindu Religious Trust has been filed

on behalf of the petitioner. It shows that the notice has been

served in the office of the Trust on 11.07.2019.

No one appears on behalf of Religious Trust
(Respondent no. 5) today. Learned counsel for the petitioner and
the State are present.

Heard learned counsel for the petitioner and the State
for final disposal.

The petitioner has moved this Court for a direction to
the respondent authorities not to disturb the petitioner from



constructing L.P.G. gas godown over the vacant land said to have been acquired by the petitioner under a lease deed for 20 years. Learned counsel for the petitioner submits that the petitioner has been selected for L.P.G. distributorship at Sonwan and while the petitioner was going with the construction of the godown on the lease land bearing Khata No. 88, Khasra No. 369/595 measuring 3 kathas and 7 dhurs, the Police officials referring to the direction of the high officials pressurized the petitioner to remove the constructed portion of the said godown. It is also submitted that although the petitioner produced all the relevant documents before the respondents concerned requesting thereby to grant permission for construction of the godown on any condition and even as the petitioner was ready to give an undertaking to remove the godown in the event of dispute resolved in favour of any other party, the Police Authorities did not allow her to proceed with the work. The petitioner came to know from the officials sources that pursuant to letter dated 12.09.2018 written to the Respondent District Magistrate by the Superintendent of the Religious Trust Board, the petitioner has been estopped from carrying on the ongoing construction work.

In course of hearing earlier while adjourning the matter on 23.05.2019, this Court directed the respondents to



submit their response within two weeks to the main petition as well as one interlocutory application praying for the interim relief. Till date neither the State nor Respondent No. 5 have come out with any counter affidavit. No application for extension of time has been filed.

Today in course of hearing learned counsel for the petitioner has produced before this Court a copy of Letter No. 570 dated 15.09.2018 written by Anchala Adhikari, Gadhpura (Begusarai) to the Sub-Divisional Officer, Bakhari wherein he has referred a complaint said to have been made by one Mahanth Deep Narayan Das in respect of the land in question claiming that the said land is that of the Math. Thereafter the complaint has been examined by the Halka Karmachari, who submitted a report that the land is recorded in the name of Raiyat Ramanand Das bearing Jamabandi No. 150 on which the construction work was going on. The Circle Officer has stated that with the help of the local Police the construction work was stopped. He has thereafter inspected the spot and found that in course of enquiry it was revealed that there is no Mahanth having name Sri Madan Das which is mentioned in the Certificate No. 1760 dated 27.08.2004 issued by Bihar State Religious Trust Board. Therefore, the said certificate has been



found suspicious. He has further opined that on the basis of the sale deed and the khatian the land in question is not that of a Math and it appears to be a private property of Ramanand Das in whose name Jamabandi has been created.

In this regard when this Court goes through another letter bearing Memo No. 308 dated 24.06.2019 written by the Police Inspector-cum-Officer-in-Charge, Bakhari Police Station to the Superintendent of Police, Begusarai copy of which has been placed before this Court it appears that the construction work was stopped on oral instruction of the then Sub-Divisional Officer, Bakhari so as to maintain law and order. He has clearly stated that neither from the Sub-Divisional Officer, Bakhari nor from any other person a written information or written order calling upon him to stop the ongoing work was made available to him and the construction work was stopped on oral instruction. (emphasis supplied)

The contents of the letter dated 24.06.2019 of the Police Inspector-cum-Officer-in-charge, Bakhari Police Station depicts the disturbing feature of the excessive power having been exercised by the Police Officer on what is said to be an oral instruction from the then Sub-Divisional Officer, Bakhari.

In the opinion of this Court there are enough



provisions under the Code of Criminal Procedure to deal with a law and order issue if it so arises in a given area. It is evident from the letter of the Officer-in-charge that no order at all was issued in accordance with law calling upon him to take steps to stop the ongoing construction work of the petitioner. He has, on his own statement admitted that the whole action restraining the petitioner from the carrying on the ongoing construction work was based on oral instruction from the then Sub-Divisional Officer, Bakhari.

This Court is of the prima-facie view that this kind of unmindful and irresponsible executive action and irresponsible use of Police force has resulted in stoppage of work without there being any lawful proceeding and order of a competent court/forum/authority restraining the petitioner from carrying on the construction work. This Court, therefore, while exercising its constitutional power as a writ court takes a prima-facie view that the action of the Police officials stopping the construction work on oral instruction of the then Sub-Divisional Officer is liable to be held illegal and unjustified. Prima-facie to this Court it appears to be an irresponsible exercise of power on the part of the Police officials and if it has been done at the instance of the then Sub-Divisional Officer, Bakhari, it would be a matter of



concern as it is not based on the principles of fair play in action.

On the face of the contents of the letter dated 15.09.2018 of the Circle Officer, this Court finds that there is no legal and valid reason at this stage to restrain the petitioner from carrying on the ongoing construction work of the godown.

This Court, therefore, while restraining the respondents from interfering with the ongoing construction work of the godown directs the District Magistrate-cum-Collector, Begusarai to himself conduct an enquiry as to how the then Sub-Divisional Officer, Bakhari and the then S.H.O., Bakhari Police Station stopped the petitioner from carrying on the construction work without there being any proceeding in respect of the land much less any order in accordance with law. If it is found that the authorities concerned had acted without there being any lawful proceeding and order, the District Magistrate shall proceed further in accordance with law and if so required he will bring this to the notice of the competent authority/department as the case may be to proceed against the erring officials. It will be a totally independent enquiry to find out as to how without there being any lawful proceeding and order the petitioner was restrained from carrying on the construction work.



Learned counsel for the petitioner has submitted before this Court that the petitioner still undertakes to abide by any lawful order in case any dispute with respect to the land goes against the petitioner.

Let both the letters mentioned above be kept on records.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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