

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17252 of 2013

=====

Kali Kant Jha S/O Late Yugeshwar Jha Resident Of Village- Dulha, Police Station- Bisphi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Revenue and Land Reforms.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Old Secretariat, Patna.
3. The Collector, Madhubani.
4. The Circle Officer, Bisphi, Madhubani.
5. The Block Development Officer, Bisphi, Madhubani.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Advocate
For the Respondent/s : Mr. Apurv-Harsh, A.C. to SC-28

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 16-12-2019

Heard learned counsel for the parties.

2. The petitioner is seeking direction commanding the Respondents State of Bihar and its official to remove the encroachment from the petitioner's land pertaining to Khesra No. 2729 measuring 10 Dhurs. It is the petitioner's case that the land in question is in possession of the petitioner since the time of his ancestor and his new survey *khatiyani* has also been made in his name and the petitioner has been paying rent to the Bihar Government.



3. It has been submitted that eastern side of the said land has been encroached by the respondents. A statement has been made in paragraph-6 of the writ application that when the respondents began to build up *pucca* road over the land in question under *Prime Minister Gramin Sarak Yojana*, the petitioner had served a notice on respondents under Section 80 of the Code of Civil Procedure through registered post, but no response was ever received by him.

4. A counter affidavit has been filed on behalf of the Respondents State of Bihar sworn by the Circle Officer, Bisphi, District Madhubani, wherein a plea has been taken that the petitioner's claim of his possession over the land in question has been rejected by learned Munsif-II, Madhubani, vide order dated 17.10.2011 passed in Title Suit No.3/2007. The respondents have denied the assertion in the writ application that they have dispossessed the petitioner from the land in question and that the petitioner was ever in possession of the land for more than 12 years. It has been asserted in the counter affidavit that a *pucca* road has been constructed over the existing road which is in place since time immemorial.

5. It is evident from the pleadings of record that the petitioner is claiming his title over the land in dispute. The



disputed question of title and possession cannot be gone into in a proceeding under Article 226 of the Constitution of India. The averments made in the writ application regarding petitioner's claim of his title and possession over the land in question, have been controverted by the Respondents State of Bihar in the counter affidavit.

6. In such circumstance, this Court cannot entertain this writ application.

7. The petitioner shall, however, be at liberty to take recourse of appropriate provisions of law by way of filing suit in a civil court of competent jurisdiction for declaration of his right, title and interest in respect of the land in question.

8. This writ application stands disposed of with the aforesaid observation.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	20/12/2019
Transmission Date	N.A.

