

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14999 of 2014

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Bijay Chandra Mishra Son of Late Rameshwar Mishra Resident of Village-
Chand Chaur Mishra Tola, P.S.- Ujiyarpur, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The District Magistrate, Muzaffarpur
3. The Deputy Collector, Muzaffarpur
4. The Land Reform Deputy Collector, Moraul, Muzaffarpur
5. The Circle Officer, Moraul, Muzaffarpur
6. The Senior Superintendent of Police, Muzaffarpur
7. The Superintendent of Police, Muzaffarpur
8. The Station Head Officer, Dholi Sakara, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar
For the Respondent/s : Mr.Sc-11 Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 06-03-2020 Heard both sides.

The petitioner moved this Court in this writ petition for a direction to respondent Nos.2 to 5 to remove the encroachment from the lands duly settled in favour of the petitioner situated in village Bishunpur Titra, Moraul, District- Muzaffarpur and hand over the possession to the petitioner and pass any appropriate order/orders.

Learned counsel for the petitioner submits that petitioner is an ex-Army man and he participated in 1971 Indo-Pakistan war. He received fatal injury in his leg. Petitioner



retired from his service on 31.01.1990. During his service period, 3.01 acres land of Khata No.489, new Khesra No.90(old Khesra No.42) situated in village Bishunpur Titra, Circle Moraul, Muzaffarpur was settled vide Settlement Case No.8 of 1971-72. The total area of Plot No.42 was 3.99 acres. The petitioner was in possession of the land but some persons of the village started putting hindrance in peaceful possession of the petitioner. On the basis of a report of S.H.O., Sakara Dholi, a proceeding under Section 107 Cr.P.C. vide Case No.592M of 1973 was initiated. It is further submitted that in the northern boundary of the settled land of the petitioner, there is a cremation ground being Khesra No.1032, Khata No.302 area 1.94 acres but the people started encroaching upon the land of the petitioner and constructed cremation ghat. The petitioner wrote several letters to the authorities but all went in vain. Learned counsel for the petitioner submits that respondents be directed to remove the encroachment from the lands settled in favour of the petitioner but from perusal of the record, it appears that new Plot No.90 of Khata No.489 is said to have been settled in favour of the petitioner in the year 1971-72 but it appears that a proceeding under Section 107 of the Cr.P.C. was initiated in the year 1973 itself between the petitioner on one side and the



villagers on the other side. There appears a bonafide land dispute as the villagers have been using the land as cremation ground situated by the side of the land said to have been settled in favour of the petitioner. Petitioner has not stated anywhere that when the boundary wall around the cremation ground was constructed encircling the land settled in favour of the petitioner. Therefore, I am of the view that in a writ jurisdiction, this Court is unable to issue any definite direction unless there is admitted fact that the villagers were not using the land before the settlement of the land in favour of the petitioner as a cremation ground.

Having considered the facts, I do not find any merit in this writ petition and the same is dismissed with liberty to the petitioner to file petition, if so advised, before the Circle Officer for demarcation of his land or file a suit before the competent Civil Court for removal of encroachment or delivery of possession.

(Prabhat Kumar Jha, J)

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