

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8233 of 2020

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Bijendra Kumar S/o Late badri Narayan, R/o Vill.- PanchuHisua, Tola-
MahavirAsthana, Kachehri Road, P.O. and P.S.- Hisua, Distt.- Nawada

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Registration, Prohibition and Excise, Bihar
2. Principal Secretary, Department of Registration, Prohibition and Excise, Bihar
3. The District Magistrate cum Collector, Nawada
4. The Sub-Registrar, Rajauli, Distt.- Nawada
5. Deputy Collector Land Reforms, Rajauli, Nawada
6. Circle Officer, Akbarpur, Nawada
7. Kumar Gaurav, S/o Late Jagdish Prasad, R/o Gaya Road, Bhadauni, P.O. and P.S.- Nawada, Distt.- Nawada

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.SanjeevRanjan
For the Respondent/s	:	Mr.P.N. Shahi (AAG 6) (Sr. Advocate) with
	:	Mr.Patanjali Rishi

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-09-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The petitioner has put to challenge an order dated 04.06.2020 passed by the Sub-Registrar, Nawada whereby a representation filed by the petitioner in the light of an order of this Court dated 05.03.2020 passed in C.W.J.C. No. 23955 of 2019, has been rejected.

3. The petitioner had earlier approached this Court by filing the aforesaid writ application registered as C.W.J.C. No.



23955 of 2019 seeking direction to the District Sub-Registrar, Rajauli to register a sale deed with respect to land appertaining to Cadastral Survey Khata No. 165, Plot No. 491 corresponding to Revisional Survey Khata No. 279, Plot No. 806 and 782 in favour of the petitioner, which was being sold by the private respondent no. 7. This Court, in such circumstance, had directed the Sub-Registrar to pass a final order with regard to the registration of a sale deed.

4. The petitioner, has also sought for a direction to the respondent Sub-Registrar, Rajauli to register the sale deed presented by the vendor/(respondent no. 7) .The impugned order dated 04.06.2020 has been brought on record by way of Annexure-1 to this writ application.

5. This is not in dispute that the petitioner has statutory remedy of appeal against the impugned order passed by the learned Sub-Registrar.

6. Heard Mr. Sanjeev Ranjan, learned counsel for the petitioner and Mr. P.N. Shahi, learned Additional Advocate General for the State of Bihar.

7. A counter affidavit has been filed on behalf of the State of Bihar to which a rejoinder has been filed on behalf of the petitioner.



8. Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioner has relied on following decisions of this Court and Kerala High Court in support of his contention that the Sub-Registrar is under obligation to register a document duly presented for the purpose:-

1. ***Bihar Deed Writers Associations and Ors. v. State of Bihar and Ors.***(AIR 1989 PAT 144)

2. ***Dr. Madhu Sinha v.The State of Bihar through Secretary cum Inspector General, Department of Registration, Bihar and Ors.***reported in **2015 (1) P.L.J.R. 956.**

3. ***K. Eshaque v. Sub-Registrar, Kozhikode and Anr.*** (AIR 2002 KERALA 128).

9. He has submitted that the question of title cannot be gone into by the registering authority. He has also relied on the Supreme Court's decision in case of ***Satya Pal Anand v. State of Madhya Pradesh*** reported in **(2016) 10 SCC 767.**

10. Mr. P.N. Shahi, learned Additional Advocate General-6 appearing on behalf of the State of Bihar on the other hand has submitted that this writ petition is not maintainable. Against the order of the Sub-Registrar, the petitioner ought not to have approached this Court straightaway without availing the statutory remedy of appeal before the Collector of the District. 18. In response to the said submissions, Mr. Sanjeev Ranjan has



submitted that since the Title Appeal preferred by the State of Bihar through the Collector, Nawada is pending in which the disputed land is the subject matter of the sale deed sought to be registered which has been declined, the petitioner should not be relegated to the Collector by preferring appeal, there being likelihood of the Collector being biased against the petitioner.

11. It is worthy to mention at this juncture that a Title Suit No. 202 of 2013 was filed by one Krishna Prasad Bhojpuri and Vishwananth Prasad Bhojpuri seeking a declaration that the recent Revisional Survey entry made in R.S. Khatiyani with respect to the suit land in the name of Bihar Sarkar and its remarks: 'illegal possession in the name of Triveni Singh' were wrong, illegal, inoperative and not binding on the plaintiffs. The plaintiffs had also claimed confirmation of possession with respect to the suit land. The suit was filed with the State of Bihar through the Collector, Nawada as one of the defendants. The suit was decided and decreed in favour of the plaintiffs by learned Sub Judge-VII on 20.08.2018. Respondent no. 7, who is the proposed vendor, claims to have purchased the land in question through registered sale deed on 24.07.2018, evidently before passing of the judgment and decree by the Trial Court in Title Suit No. 202 of 2013. It is the State of Bihar which has filed Title Appeal No. 27 of 2019 in the Court of learned District Judge, Nawada challenging the judgment



and decree dated 20.08.2018 passed by learned Sub-Judge-VII, Nawada in Title Suit No. 202 of 2013.

12. In such circumstance, the contention that because the State of Bihar has filed an appeal against the judgment and decree of the Trial Court in respect of the land in question, there is likelihood of the Collector carrying bias while exercising his statutory function as an Appellate Authority in my opinion is wholly misconceived. For the purpose of deciding petitioner's appeal, it cannot be said that the Collector himself is a party to the proceeding in the first Appellate Court and, therefore, there is likelihood of bias. The test of real likelihood of bias is whether a reasonable person in possession of relevant information would have thought whether the adjudicator was likely to be disposed to decide the matter only in a particular way. If the submission, which is being advanced on behalf of the petitioner is to be accepted, no official under the State or the Central Government can function as a *quasi-judicial* authority deciding right of a party vis-a-vis that of the Governments. The Collector cannot be said to be having any interest in the appeal, which is pending between the State of Bihar and private respondents.

13. In my opinion, pendency of the first appeal preferred by the State of Bihar through Collector (defendant no. 1) does not raise a reasonable apprehension of likelihood of bias so as to



disentitle the Collector to function as an Appellate Authority against the impugned order passed by the District Sub-Registrar.

14. It goes without saying that the appellate authority has to apply its mind objectively to the dispute before it.

15. The decision rendered in case of ***Hindustan Petroleum Corporation Ltd. v. YashwantGajanan Joshi and Ors.*** reported in (1991) Supp (2) SCC 592 can be usefully noted in this regard. In that case, the Hindustan Petroleum Corporation intended to acquire land for laying down a pipeline. The Central Government had appointed one of the Corporation's employees as the Competent Authority for the said purpose under the extant statutory provisions for assessing compensation for right of user in the land acquired by the Corporation. Responding to a contention that the Government ought not to have appointed an employee of Corporation for the said purpose, as the Corporation was itself an interested party in the dispute, Supreme Court made following observations:-

“.....A party is entitled to raise the ground of bias against an appointment of an individual officer as competent authority on sufficient material placed on record in this regard, but not merely because such competent authority is an employee of the Corporation. It cannot be a ground for any disability or disqualification in appointing such person as competent authority. If we take the matter to its logical conclusion the result would be that no



employee of the State Government or the Central Government as the case may be will be appointed as competent authority where petroleum and minerals pipelines are to be laid for a project initiated by the State Government or the Central Government respectively. It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in private employment with that of a person in public employment. The authorities mentioned above and relied upon by Mr Dholakia are clearly distinguishable.”

(Underlined for emphasis)

16. The said decision in case of ***Hindustan Petroleum Corporation Ltd.*** (supra) was subsequently considered and noted with approval in case of ***TrilokSudhirbhai Pandya v. Union of India and Ors*** reported in (2011) 10 SCC 203, paragraph 22 of which reads as under:-

“22. In *Hindustan Petroleum Corpn. Ltd. v. YashwantGajanan Joshi* [1991 Supp (2) SCC 592] , relied on by the High Court as well as the learned counsel for Respondent 4, this Court has clearly made a distinction between a public corporation and a private employer. In para 13 of the judgment, this Court has held: (SCC p. 602)



“13. ... It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in private employment with that of a person in public employment.”

17. In case of **Trilok Sudhirbhai Pandya** (supra) the dispute before the Supreme Court was in relation to appointment by the Government of India of a competent authority for Acquisition of right of User under Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. A private person, on the request made by the Government of Gujarat, was appointed as competent authority under the said Act with clear stipulation that expenses of pay and allowances and any other incidentals of the officials shall be borne by the Company. Noticing the vast powers, a competent authority exercises under the Act read with the Rules framed thereunder, the Supreme Court sustained challenge to appointment of the competent authority holding in paragraph 21 as under:-

“21. Thus, as per the judgment of this Court the test of likelihood of bias is whether there is a reasonable apprehension in the mind of the party before the court or the tribunal that the court or the



tribunal will not act with fairness and without bias on account of certain objective circumstances. There is no dispute in the present case that the salary, allowances, accommodation and transport were being borne by respondent Company directly. Thus, the competent authority was virtually an employee of Respondent 4 Company and there were grounds for the appellants to entertain a reasonable apprehension in their mind that the competent authority will not act fairly and is likely to act with bias. In the judgment of this Court in Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] it has been held that a judgment which is the result of bias or want of impartiality is a nullity and the trial coram non judice. Thus, the entire proceedings for determination of compensation before Shri V.I. Gohil would be a nullity.”

19. This Court, therefore, sustains the objection raised on behalf of the State of Bihar that the petitioner has the effective alternative statutory remedy of appeal against the impugned order, which he has not invoked. It is not an exceptional case where the Court should permit the petitioner to invoke extraordinary remedy under Article 226 of the Constitution of India without availing statutory remedy of appeal.

20. This application is accordingly dismissed but with a liberty to the petitioner to approach the appellate authority by filing appeal. If the petitioner prefers an appeal within one month from the date of uploading of this order, the appellate authority should liberally consider any application seeking condonation of



delay in filing appeal, keeping in mind the fact that the petitioner was pursuing his remedy before this Court.

21. It is further expected that the Appellate Authority shall dispose of the appeal, as expeditiously as it is possible.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.09.2021.
Transmission Date	N/A

