

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8131 of 2020

Syed Asghar Ali, Male, aged about 76 years, Son of Late Syed Mohammad Mehdi, Resident of Badshah Manzil, Guzri Bazar, Patna City, P.S.- Khajekalan, Patna City, District- Patna- 800008.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Revenue, Government of Bihar, Patna.
4. The Principal Secretary, Cabinet Secretariat Department, Old Secretariat, Government of Bihar, Patna.
5. The Divisional Commissioner, Magadh Division, Gaya.
6. The Collector-cum-District Magistrate, Nawada.
7. The Deputy Collector Land Reforms (DCLR), Nawada.
8. The Circle Officer, Sadar Nawada, District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shahabuddin Azeem, Advocate
For the State	:	Mr. Md. Khurshid Alam, AAG 12 with Mr. Majid Mahboob Khan, AC to AAG 12

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-02-2021

Heard Mr. Shahabuddin Azeem, learned counsel for the petitioner and Mr. Md. Khurshid Alam, learned AAG 12 along with Mr. Majid Mahboob Khan, learned AC to AAG 12 for the State.

2. The petitioner has moved the Court for the following reliefs:

“That the present writ petition is being preferred before this Hon’ble Court for issuance



of writ, writs, order, orders, direction, directions, specially a writ of mandamus directing the Collector-cum-District Magistrate, Nawada to stop forthwith the construction work going on over R.S. Plot No. 1096, 1097 and 1100, an area covering about 15 acres, out of total 35 acres, pertaining to Plot No. 1093, 1094 and 1095, for which judgment and decree passed by the learned Sub-Judge 1st, Nawada in Title Suit No. 432 of 2016, CIS No. 468 of 2016 (Syed Asghar Ali Vs. State of Bihar through the Collector, Nawada and Circle Officer, Sadar Nawada).

Further be pleased to restrain the Collector, Nawada for any unlawful coercive step against the petitioner and their workers present at the land which is under the possession of the petitioner from the year 1945 and before 1945 his father Late Syed Mohammad Mehdi, resident of Guzri Bazar, Patna City, P.S. Khaje-kalan, District- Patna-800008.

And further be pleased to pass such order, orders as your Lordships may deem fit and proper in the facts and circumstances of the case in accordance with law.”

3. The following facts are not in dispute:

For the lands in question the petitioner filed a Title Suit which was decreed in his favour confirming his title and possession over the same. Thereafter, construction was being made on a portion of the lands in question by the authorities for an Engineering College. The State also filed appeal against the judgment of the Civil Court in the Title Suit in favour of the petitioner, which is still pending. Further, the petitioner filed an injunction petition in the appeal to restrain the authorities from making construction over the lands in question.



4. Learned counsel for the State submitted that once the petitioner has a decree in his favour, if there was any violation of the same, his remedy was to file an execution case but not choosing to do that and coming before this Court and also filing injunction petition in the appeal filed by the State are thoroughly misconceived. It was submitted the Court would not interfere in the matter as the petitioner has a decree of a competent Civil Court in his favour and the remedy available to him under the common law is required to be availed of and the Court would not act as an executing authority of any order passed by the Civil Court for which the Code of Civil Procedure, 1908 confers special procedure and jurisdiction on the Courts below. It was further submitted that, as it is, the interest of the petitioner is protected, for if ultimately he succeeds, whatever investment or construction the authorities have made would pass on to the petitioner and, thus, the petitioner stands to gain.

5. Faced with the situation, learned counsel for the petitioner submitted that the matter be disposed off with liberty to move before the Court below for effective implementation of the decree itself in his favour with regard to the lands in question.



6. Learned counsel for the State does not object.

7. In view thereof, as prayed for by learned counsel for the petitioner, the writ petition stands disposed off with liberty aforesaid. It is made clear that the Court has not expressed any opinion on the merits of the matter.

8. The interim order dated 29.09.2020 restraining the authorities from making any construction upon the lands in question stands vacated.

9. On the apprehension expressed by learned counsel for the petitioner, with regard to any adverse effect due to disposal of the present case, the Court would only observe that this order shall not prejudice the petitioner in any proceeding which he may institute with regard to the lands in question based upon the decree in his favour in the suit.

(Ahsanuddin Amanullah, J)

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