

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9300 of 2020

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Inderjit Prasad Roy, S/o Late Ramnihora Roy, Vill-Uttri Dhamaun, P.S.
Patory, Dist. - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate- cum-Collector. Samastipur.
3. The S.D.O., Patory.
4. The D.C.L.R., Patory
5. The Circle Officer, Patory.
6. Rita Kumari, W/o Brajesh Kumar Nirala, the Panchayat Mukhiya of Uttri Dhamaun, P.S. Patory, Dist. Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S S P Yadav, Advocate
For the State	:	Mr. Md. Khurshid Alam, AAG 12 with Mr. Asif Kalim, AC to AAG 12
For the Respondent No. 6	:	Mr. Sanjeev Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 25-03-2021

Heard Mr. S S P Yadav, learned counsel for the petitioner; Mr. Md. Khurshid Alam, learned AAG 12 along with Mr. Asif Kalim, learned AC to AAG 12 for the State and Mr. Sanjeev Kumar Singh, learned counsel for the respondent no. 6.

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

“(i) ...to stop illegal demolition and illegal construction of Government Building in the Land Measuring 11 decimal pertaining to khata No.2643 Plot No-3621 situated in Mauza- Dhamaun, P.S.- Patory, Dist.: Samastipur by Mukhiya of Panchyat Uttri



Dhamaun and Circle Officer, Patory, irrespective of facts that the said land in question belongs to Petitioner and such Ex Land loards Babu Rajniti Prasad Singh and Babu Devniti Prasad Singh gave Hukmanama in favour Petitioner's father

- (ii) To direct the respondents not to construct Government Building Taking note That the Petitioner has obtained order in T.S No.1540/2006 in which he has impleaded state Government of Bihar as defendant.*
- (iii) To any other relief or reliefs to which the petitioner may be found entitled in the facts and circumstances of the case."*

3. The matter has been heard at length on a number of occasions and thrice the Court had directed for an exercise of physical measurement of the lands in question by the authorities in the presence of the petitioner or his representative and the same was also required to be videographed. Such exercise has been done.

4. According to the petitioner, in the judgment of the Court below in Title Suit No. 1540 of 2006, 11 decimals of lands in question which were recorded as "*Anabad Bihar Sarkar*" have been held to belong to the petitioner and accordingly his name was entered in the *khatiyani* in place of "*Anabad Bihar Sarkar*" on 13.07.2013. It was submitted that today, on the ground, the petitioner is not in possession of the entire 11 decimals as part of his lands have been encroached by the authorities who are constructing *Panchayat Bhawan* at the



instance of the respondent no. 6, who is the local Mukhiya. Learned counsel further submitted that even the exercise of actual measurement, though conducted thrice, has been made with the intention to somehow defeat the genuine and *bona fide* claim of the petitioner as the point of reference has not been properly taken by the authorities. It was submitted that there is a road adjacent to the plot/land in question which has been assumed by the authorities to be part of 11 decimals of the land which the petitioner has bought which is absolutely erroneous as the petitioner has nothing to do with the road and his 11 decimals was not forming part of the road, as the road has a separate Plot Number, being 3614, whereas the plot claimed by the petitioner is 3621. Summing up his argument, learned counsel submitted that the authorities are obliged to demarcate his entire 11 decimals of land on the ground which is also in terms of the judgment in his favour in the Title Suit.

5. *Per contra*, learned counsel for the State submitted that the claim of the petitioner is without any legal or factual basis. It was submitted that first of all the judgment of the Lower Court is *ex parte* as it was uncontested. More importantly, learned counsel submitted that the road which is existing for the last 80-85 years was repaired in the year 2002-



03 and till that time there was no objection from any party, much less the petitioner. However, it was submitted that even the judgment in favour of the petitioner which is of the year 2010 was actually given effect to in the year 2013 by entry of the name of the petitioner in the *khatiyān* with regard to 11 decimals of land. Learned counsel submitted that the catch here is that on the ground the petitioner was not in possession of 11 decimals as he was occupying only 8.75 decimals whereas 2.25 decimals of the land claimed by the petitioner was part of the road just adjacent to his plot. Thus, it was submitted that even if it is assumed that the ownership of the land was with the petitioner, but once a road which is a public utility is in place for the last 80-85 years, it cannot be said that the State authorities have encroached upon the land of the petitioner as it was his duty to ensure that the land his vendor transferred to him was clear and free of any encumbrance/construction, including any road, which does not seem to be in the present case.

6. The Court having given its anxious thoughts finds that the facts are heavily in dispute. Though on paper, the petitioner may have an order of the Civil Court with regard to 11 decimals of land but on the ground only 8.75 decimals of land out of the said 11 decimals are in his possession for the reason



that pursuant to three measurements, it transpired that 2.25 decimals, out of that 11 decimals, now forms part of the road, that too, for the last 80-85 years. Though, learned counsel for the petitioner has disputed such position but, in the considered opinion of the Court, such fact cannot be appropriately and properly adjudicated in the present proceeding as it would entail adducing evidence after examining witnesses.

7. At this juncture, learned counsel for the State informed that the authorities have also filed an appeal against the *ex parte* judgment in favour of the petitioner, which is pending.

8. In the aforesaid background, taking an overall view in the matter, the writ petition stands disposed off with the observation that the parties have to get the matter resolved before the Court below either by the petitioner by filing fresh Title Suit seeking removal of the so called encroachment or in the alternative, in the appeal filed by the State in which all such issues can be raised. However, the discretion is with the parties concerned to choose their course of action.

9. The Court would indicate that it has neither gone into nor expressed any opinion on merits and it shall be open to the Court below to go into the same if the parties approach the



said forum.

10. Before parting, one disturbing fact is noticed by the Court. In two affidavits filed by the authorities, a categorical stand has been taken that 11 decimals of land claimed by the petitioner are already in his possession. Now this fact has been falsified by the latest measurement done by the authorities themselves, in the presence of the Sub-Divisional Officer, Patory and the DCLR, Patory. This being the case, the Court has no hesitation to record that a false statement has been made on oath, that too, by the authorities in the present proceeding.

11. Accordingly, the Court had two options; either to proceed by directing the Registrar General of this Court to institute appropriate proceeding against the deponents of those affidavits as also all persons who are concerned with the measurement in which it was shown that the petitioner has 11 decimals of land in his possession or in the alternative to direct the authorities to initiate appropriate proceeding for such conduct of blatantly misleading the Court on affidavit.

12. Learned counsel for the State, at this juncture, again made a submission that the authorities be entrusted with taking appropriate action in the matter and the Court may not get proceeding instituted against such officers.



13. The Court, thus, directs the District Magistrate, Samastipur to initiate appropriate action on the administrative side, in accordance with law, against all concerned for having taken a totally false stand on oath in the present proceeding, details of which shall be furnished by the learned State Counsel to the District Magistrate, Samastipur. Learned counsel for the State submitted that strict cognizance would be taken of such conduct and further that the proceedings shall be taken to their logical conclusion, expeditiously.

(Ahsanuddin Amanullah, J)

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