

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1 of 2020

In

Civil Writ Jurisdiction Case No.12003 of 2019

Mahanth Bhubneshwar Bhagat @ Mahanth Bhuneshwar Bhagat S/o Late Mahanth Sheo Goswami Resident of Village-Ilamdipur, P.O. Sakara, P.S.- G.B.-Nagar, Tarwara, District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Development Department, Bihar, Patna.
2. The Commissioner Saran cum 1st Appellate Authority Commissioner Chapra.
3. The Collector Siwan.
4. The District Public Complaint Redressal Officer Siwan.
5. The Block Development Officer Pachrukhi, District- Siwan.
6. The Circle Officer Pachrukhi, District- Siwan.
7. The Bihar State Board of Religious Trust.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajendra Narain, Sr. Adv.
Mr. Dineshwar Prasad Singh, Adv.
For the Resp. No.7 : Mr. Ganpati Tripurati, Sr. Adv.
For the State : Mr. Sanjay Prasad

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-11-2022

Heard Mr. Rajendra Narain, the learned senior

Advocate for the petitioner and Mr. Ganpati Trivedi, learned

senior Advocate, who had been requested by this Court to



appear for the Bihar State Religious Trust Board, as the property in question is claimed to be the property of the Board. Mr. Sanjay Prasad, learned counsel for the State has also assisted this Court in the hearing of this appeal.

The grievance of the petitioner, who is a *Mahanth*, is that the land belonging to his *Math* has been consumed for construction of a *pucca* road, which admittedly is being used by public at large. The land, which has been used in the construction, is a large chunk of land surrounding a pond and its embankment.

It appears from the records of this case that the appellant had made grievance regarding construction of the public road at the cost of the government but, without obtaining any consent from the *Math* or the appellant, who otherwise also had been investing his time and energy in Public Welfare Schemes, but such complaints before different authorities went unheeded.

The petitioner appears to have approached the Commissioner of the Division, who, finding that the grievance of the appellant is not being looked into, directed the Circle



Officer to find out whether the public road in question was constructed over the *Math* property and, if yes, then whether consent of the *Math* or the appellant was obtained before construction of *Pucca* road. The aforesaid directions of the Commissioner was never taken to its logical conclusion, forcing the appellant to approach the District Grievance Redressal Cell, which appears to have passed an order suggesting the appellant to move the Secretary of the Public Grievance Department for implementation of the order of the Commissioner. The appellant came rushing to this Court vide C.W.J.C. No. 12003 of 2019 claiming that instead of complying with the order of the Commissioner, the Public Grievance Redressal Cell has asked him to approach the higher officer, namely, the Secretary of the Department for the needful and also prayed for an adjudication whether the appellant was required to be restituted/compensated for the land of the *Math* having been consumed for construction of a public road.

Even if such road was consumed with or without the consent of the *Math*, the learned Single Judge in C.W.J.C. No.



12003 of 2019 referred above, found that with respect to the land, which was used for construction of the road, there was a dispute of ownership. A Title Suit was filed by the Guru of the appellant, in which case, the appellant was substituted after the death of his Guru. It was held that the land in question was the trust property and not the property of the *Math*. The aforesaid findings of the Trial Court in Title Suit No. 243 of 1987 has been appealed against, which is still pending adjudication before the competent Appellate Court. It was also found by the learned Single Judge that the road in question was built about seventeen to eighteen years ago and there was no record of any objection from any quarter while the road was being constructed and for many years thereafter.

The learned Single Judge, therefore, on the twin issue of the land not belonging to the *Math* or the appellant and assuming consent of the *Math* as well as the appellant in the absence of any documentation with respect to any objection at the time of construction of the public road at government cost, dismissed the writ petition holding that the appellant was not entitled to get any compensation.



Hence this appeal.

Mr. Narain, learned senior Advocate for the appellant has contended that the learned Single Judge completely misdirected himself in deciding the issue whether the appellant was entitled to compensation or not only on the basis of presumed consent. What was challenged before the learned Single Judge was the order passed by the Public Grievance Redressal Cell, which, instead of giving directions for compliance of the order passed by the Commissioner for an enquiry whether the land belonged to the *Math* or to the Bihar Religious Trust Board, the appellant was suggested to approach the higher authority.

We have heard the learned counsel for the parties. We do not intend to interfere with the order passed by the learned Single Judge for the following reasons:

(i) Neither the writ petition nor the appeal has been preferred on behalf of the *Math*, which alone would be the owner of the property if the Title Appeal succeeds. (ii) The construction of the road began about two decades ago and there is no documentation of any challenge whatsoever with



respect to use of such land. (iii) Even after the construction of the road, the same was never challenged. (iv) No doubt the appellant had been running from pillar to post for grant of compensation for the said plot of land, which earlier served as an embankment of a public pond, but such efforts were made only after a considerable lapse of time. (v) The issue of title and possession of the land in question is still in a flux in view of the findings of the Civil Court in Title Suit No. 243 of 1987, against which verdict, the appeal is still pending. (vi) Assuming but not admitting that the appeal would be decided in favour of the appellant, then also it would be an uphill task for the appellant to demonstrate before any authority that no consent was taken from him for construction of the road.

There is no gainsaying that there cannot be any presumption of consent, which has to be a written consent and not oral, as it concerns the property rights of an individual/organization, but raising no objection after more than one decade and then clamouring for grant of compensation on the plea that the *Math* itself has been engaged in charitable act, causes this Court to be very circumspect.



The appellant ought to await the verdict of the Title Appeal for him to raise any objection.

We do endorse the view of the learned counsel for the State that the appeal needs to be dismissed on the demurer.

After having said that, we dispose of this appeal by declaring that we do not wish to interfere with the orders passed by the learned Single Judge and the issue has been left for the appellant to agitate, if so advised, if he succeeds in Title Appeal.

The appeal stands disposed of with the aforesaid observation.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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