

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9229 of 2018

1. Rajendra Ray
2. Lakhendra Ray Both sons of Late Devi Lal Ray, Resident of Village- Subhai South Tolla, P.O.- Subhai, P.S.- Hajipar Sadar, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector-cum- District Magistrate, Vaishali at Hajipur.
3. The Sub Divisional Officer, Vaishali at Hajipur.
4. The Superintendent of Police, Vaishali at Hajipur.
5. The Circle Officer, Hajipur, Vaishali.
6. The Officer In-charge, Police Station, Sadar Thana, Hajipur, Vaishali.
7. Innar Devi wife of Bramhdeo Ray, Mukhiya Gram Panchayat Raj, Bishunpur Bashant, Resident of Village- Subhai South Tolla, P.O.- Subhai, P.S.- Hajipar Sadar, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey, Advocate
For the Respondent/s : Mr.Raj Kishore Roy, GP-18

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 30-08-2022

The present writ petition has been filed for directing the respondents to stop illegal construction of road over the homestead land of the petitioners appertaining to Khata No. 453, Khesra No. 1513 situated at village-Subhai South Tola, which has been purchased by the petitioners on 17.08.1974. It is further prayed to direct the respondents to remove the road constructed over the land of the petitioners.

The brief fact of the case, according to the petitioners,



is that the land in question was purchased by the forefather of the petitioners on 17.08.1974 whereafter, the same was mutated in the name of the forefather of the petitioners and after the death of the father of the petitioners, the said land has been mutated in the name of the petitioners, and they are paying rent as also revenue receipts are being issued in their name. It is further submitted that after family partition, the land in question was measured on 16.03.2018 and it was found that land to the tune of 10 dhur situated in Khata No. 453, Khesra No. 1513 has been forcibly encroached by the Mukhiya and a road has been constructed over the same, which was objected to by the petitioners but the construction of road over the land of the petitioners did not stop leading to the petitioners filing an application before the Collector, Vaishali at Hajipur on 17.03.2018, for removal of the said road made over the private land of the petitioners, however, no action was taken and instead the boundary wall and bathroom as also the septic tank of the house of the petitioners were destroyed and demolished.

Per contra, the learned counsel appearing for the State, by referring to the counter affidavit filed in the present case by the District Magistrate, Vaishali at Hajipur, in pursuance to the order of this Court dated 16.08.2022, directing him to enquire



into the matter and file a counter affidavit after ascertaining the actual facts of the case, has submitted that an Enquiry Committee was constituted by the District Magistrate, Vaishali at Hajipur vide his letter dated 20.08.2022, whereafter, the matter was enquired into and spot verification was made in presence of the petitioners along with Anchal Amin and Rajasva Karamchari, whereupon it has been concluded that the road in question does not exist on the homestead land of the petitioners, which also stands corroborated from the report of the Anchal Amin and the sketch map of the area in question, which have been annexed as Annexure-C/1 and Annexure-C/2, respectively to the counter affidavit filed by the District Magistrate, Vaishali.

The learned counsel for the respondent-State has also referred to the joint enquiry report submitted by the Circle Officer, Hajipur, Deputy Collector Land Reforms, Hajipur and the Sub-Divisional Magistrate, Hajipur dated 23.08.2022 to submit that no road has been constructed on the land purchased by the petitioners and in fact the brick soling road was constructed over the land of one Sudama Devi, which is situated towards the North of the land of the petitioners. The learned counsel for the petitioners has not been able to controvert the aforesaid fact.



Having regard to the facts and circumstances of the case, this Court is of the view that since the District Magistrate, Vaishali has conducted a thorough enquiry and the enquiry committee has also made spot verification in presence of the petitioners along with Anchal Amin and Rajasva Karamchari, from which it has transpired that the road in question does not exist on the homestead land of the petitioners, the claim of the petitioners stands belied. In any view of the matter, even if the petitioners seek to dispute the aforesaid finding of the District Magistrate, Vaishali, such dispute is required to be raised before the appropriate forum/the competent Civil Court having appropriate jurisdiction, in view of disputed question of facts being involved in the present case, resulting in the present writ petition being not maintainable.

In this regard, reference be had to the judgment rendered by the Hon'ble Apex Court in the case of *Thansingh Nathmal & Ors. vs A. Mazid, Superintendent of Taxes*, reported in *A.I.R. 1964 SC 1419*, the one reported in (1969) 3 SCC 769 (*Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda & ors*), and the one reported in (2020) 6 SCC 256 (*Punjab National Bank & others vs. Atamanand Singh & others*).

Having regard to the facts and circumstances of the



case and for the reasons mentioned herein above as also taking into account the well settled principles of law laid down by the Hon’ble Apex Court in a catena of decisions, as referred to herein above, this Court finds that since the present case involves disputed question of facts, the present writ petition is not maintainable, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	05.09.2022
Transmission Date	

