

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.398 of 2022

In

Civil Writ Jurisdiction Case No.1314 of 2021

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Sukhan Dusadh @ Sukhan Paswan Son of Late Mangar Dusadh, Resident of Village- Banauli, P.O.- Mohan Darwa, P.S.- Karamchat, District- Kaimur (Bhabhua).

... .. Appellant/s

Versus

1. The State of Bihar
2. The Collector Cum District Magistrate, Kaimur, (Bhabhua)
3. The Circle Officer, Rampur, Circle Rampur, Kaimur (Bhabhua).
4. Sudama Pandey, S/o Late Ram Dhahi Pandey, R/o Village- Damodarpur, P.S.- Kakramchat, District- Kaimur, present address- Village- Banauli, P.O.- Mohan Darwan, P.S.- Karam Chat, District- Kaimur.
5. Awadhesh Chaubey @ Awadhesh Kumar Chaubey, Son of late Raj Kishor Chaubey Resident of Village- Banauli, P.O.- Mohan Darwan, P.S.- Karamchat, District- Kaimur.
6. Santosh Mishra, S/o late Mukhadev Mishra, Resident of Village- Banauli, P.O.- Mohan Darwan, P.S.- Karamchat, District- Kaimur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Narain, Sr. Adv.
Mr. Rakesh Kumar No.1, Adv.
For the State : Ms. Nutan Sahay

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-11-2022

Heard Mr. Rajendra Narain, learned Senior Advocate
for the appellant (respondent no. 4 in the writ proceedings)
and Ms. Nutan Sahay for the State.

The respondents no. 4, 5 and 6 here in this appeal
had preferred a writ petition, seeking quashing of the order



dated 30.05.2019 passed by the Collector-cum-District Magistrate, Kaimur, Bhabhua in Settlement Cancellation Case No. 7 of 2019 as also the order dated 19.10.2020 in BLT Case No. 619 of 2019, whereby the claim of the respondents herein with respect to the land in question was rejected.

We find that on the first date of hearing of the writ petition on 07.07.2022 the learned Single Judge directed the counsel for the respondents/petitioners to file rejoinder to the counter affidavit and observed that in the meantime, the possession of the writ petitioner (respondent no. 4 here) shall not be disturbed either by the official respondents or by the private respondents and any violation of the aforementioned direction would be treated as contempt of the Court.

On 25.07.2022, the learned Single Judge admitted the application but, only after making the interim order referred to above dated 07.07.2022 absolute till the pendency of the writ petition.

We also find that no final date was fixed for this case to be heard.



It appears from the records that the land in question was settled in favour of the appellant (respondent no.4 in the writ proceeding) in the year 1974 vide Settlement No. 17/1973-74. Soon thereafter, the appellant herein came in possession of the land in question. During the consolidation operations, an order was passed on 08.12.1976 by the Consolidation Officer in Consolidation Case No. 6/1975-76 and the land stood mutated in the name of the appellant herein.

The writ petitioners/respondents preferred a cancellation petition before the Collector, Kaimur which was dismissed and the settlement of Parcha in favour of the appellant stood confirmed on 30.05.2019. Neither the order passed by the Consolidation Officer, Bhagwanpur was challenged nor any attempt was made by the respondents herein to have the correction effected in the Jamabandi created at the instance of the appellant herein.

Apart from this, Mr. Narain has drawn the attention of this Court to the fact that one Ram Bhawan Upadhyay had died issueless and that the respondents are absolute strangers to the family of Ram Bhawan Upadhyay. One of the writ



petitioners namely Sudama Pandey claimed himself to be the son-in-law of one Ram Govind Upadhayay. It appears that because of some dispute with respect to the ownership and title of the family property, a Title Suit bearing T.S. No. 80 of 1985 was filed which was ultimately decided in favour of Rambhavan Upadhayay, which verdict by the trial court was put to challenge by the State of Bihar in Title Appeal No. 102 of 1992. The aforesaid appeal was dismissed for non-prosecution.

On many other set of facts, Mr. Narain has argued that even the respondents did not have the locus to come up before the learned Single Judge and pray for setting aside of the orders passed by the Collector, Kaimur, making the settlement with the appellant herein absolute as also the order passed by the B.L.T., rejecting the claim of the respondents herein.

Mr. Narain further submits that without adjudicating the cause of the parties, the case has been admitted and the observation and direction that the possession of the respondents shall not be disturbed at any cost has been made



absolute till the final disposal of the writ petition. This has completely emasculated the appellants herein of their right to enjoy the usufructs of the land, which stood settled initially in 1975 and thereafter in succeeding years when all such challenge of the respondents failed.

While this order was being dictated, Mr. Rakesh Narain Singh, learned advocate for the writ petitioner/respondents appeared and submitted that the contentions raised on behalf of the appellants herein are highly controvertible and till date, the respondents have remained in possession of the land. However, he agrees that this is an important right of the parties which cannot be given a short-shift and be put on the back-burner by admitting the case and making interim order of status-quo absolute till the final decision of the case and that also without fixing a final date in the case and there being every possibility of the case being de-tracked on account of non-fixing of the date of final hearing.

We find from the two orders passed by the learned Single Judge that the aforementioned issues were not adverted to but, interim order was passed in favour of the respondents



which was made absolute while admitting the appeal. This would have the potency of putting a cloud over the rights of either of the parties. The appellants would not be able to, in this case, assert their rights which according to them stands finalized and the respondents would always have their rights in a limbo, as the matter would remain pending.

In all fairness, it shall only be appropriate that instead of passing any interim order, the issue be decided on merits for all times to come.

We, therefore, request the learned Single Judge to take up the matter, hear out the parties and pass a final order in the case. If the learned Single Judge wishes to keep the matter pending for hearing, he ought to consider whether the interim order be allowed to remain absolute till an indeterminate date or otherwise. In case, it is found by the learned Single Judge that a hearing is required at a later point of time, the learned Single Judge would also consider fixing of a final date for hearing of the case.

Let this matter be placed before the learned Single Judge at the earliest for him to respond to the aforesaid



request. It would also be open for the parties to place this order before the learned Single Judge for him to fix a date for hearing the matter.

With the aforestated observation, the appeal stands disposed of.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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