

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1097 of 2017

1. Arun Kumar Srivastava and Ors Son of Sri Madhu Sudan Prasad
2. Vijay Kumar Pandey Son of late Dharamnath Pandey
3. Sanjay Kumar Sinha Son of late Surendra Prasad
4. Rajendra Prasad Singh Son of late Brijbal Prasad Singh
5. Savitri Devi wife late Jawahar Prasad Yadav All resident of Golghar Chowraha Near Bash Ghat, P.S. Budha Colony Patna District Patna.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. Building Construction Department, State of Bihar Patna through Assistant Engineer Rajendra Nagar Bu
3. The Executive Engineer, Building Division, Lodipur Near Fire Brigade Station Patna.
4. Saksham Pradhikar Sakchham Pradhiukar, Building Construction Department Vishweshraiya Bhawan Baile

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar, Advocate
For the Respondent/s : Ms. Shobha Chaubey, AC to GP 19

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 15-12-2022

Heard learned counsel for the appellants as also the State.

2. The appellant is aggrieved by the order dated 28.11.2017 in Title Suit No. 254 of 2017 passed by the learned Sub-Judge-XIII, Patna by which the claim of the appellants on the suit land was incorporated.

3. The matrix of facts giving rise to present appeal is/are as follows:



4. Vide notification no. 198 (A) dated 1912
declaration was made in a Calcutta Gazette dated 17.01.1912
declaring as follows:

*“The 15th January 1918,- Whereas
it appears to the Lieutenant -Governor in
counsel that land is required to be taken by
Government at the Public expense for a
public purpose viz for the construction of
Government offices and staff quarters in the
Village of (1) Mahuli, Thana No. 6(a)
Dhakanpura, Thana No. 7(3) Bharanllapur
thana No. 5, (4) Paharpur, thana No. 14, (5)
Badhappara, Thana No. 15, (6) Dhirachak,
Thana No. 16, (7) Chit Kohra, thana No. 17
(8) Yarpur, Thana No. 18 and (9) Mithapur,
Thana No. 19, in thana Phulwari Zilla-
Patna, it is hereby declared that for the
above purpose a piece of land measuring
more or less 9,425 bigha and 18 collahs of
standard measurement, equivalent to 3,116
acres bounded on the-*

*North- By the southern
boundaries of Village (1) Dujara, Thana No.
3, (4) Mainpur, Thana 2.*

*East- by the western boundaries
of village- Bankipur Thana No. 21 and
Aurra Thana No. 20*

South- By the mutual distributory

West- By the eastern boundaries



of village (1) Bhaikpura, thana No. 9, (2) Samanpura, Thana 12 (3) Auti Karhar, Thana No. 13 (4) old Phulwari, Thana No. 35,

Is within the aforesaid villages of (1) Mahuli, (2) Dhakanpura, (4) Paharpur, (5) Badhampura, (6) Dhira Chak, (7) Chitkohra, (8) Yarpur and (9) Mithapur.

This declaration is made under the provision of section 6 Act I of 1394 to all whom it may concern.

A plan of the land may be inspected in the office of the Collector of Patna.

J.H.Karn

Secy. To the Govt. of Bengal”

5. On the said land, the residence of the Executive Engineer, Building Division, Patna was constructed as also some temporary staff quarter were made for the staffs who were working with the Executive Engineer.

6. The appellant herein moved in Title Suit No. 254 of 2017 claiming that they are residing inside the same campus for more than 30 years continuously and as such, they are entitled for the relief sought for.

7. The State contested the matter making statement that the land already stands acquired in 1912 and they are



simple encroachers. The further submission of the State was that one of the plaintiff, appellant no. 4, Rajendra Prasad Singh was an employee of the Building Division, Patna and by virtue of being an employee, he was occupying one of the staff quarters and after retirement as he had no other place of accommodation was allowed on compassionate ground to over stay and thus that it cannot be a case of adverse possession.

8. The learned Court after hearing the parties vide an order dated 28.11.2017 came to the following conclusion:

“Heard both sides and perused the suit record. On perusal of the same it transpires that the plaintiffs have filed this suit for declaration of title and confirmation of possession over the suit land. The plaintiffs have stated in their petitions that they are in physical possession over the suit land more than 30 years and invested huge amount in construction. Photo copy of letter issued by department vide letter no. 6758 dated 30.11.2017, order of District Magistrate, Patna vide letter no. 6753 dated 03.11.2017. The defendants stated that the plaintiffs have no right title over the suit land and suit property absolutely belong to the defendants. They are in possession since last 50 years over the suit land. The defendants filed copy of reply from Shri Saligram Prasad Estate Officer, Building Construction Department asserting the property in the suit is government property and



also containing direction of Hon'ble High Court in C.W.J.C. No. 0515/2015 letter dated 18.07.2017 written by Estate Officer to Executive Engineer Building Construction, Patna Division. The suit land has been acquired by the State Government vide notification no. 198 (A) dated 15.01.2012 published in Calcutta Gadget of page 49 total measuring an acre 1612.025 of the purpose of different planning. Plot no. 111, 112 and 113 are the land of defendants. Hence for above discussions, it is clear that there is no prima facie case is made out for petitions filed dated 28.07.2017 and 31.10.2017 under Order XXXIX Rule 1,2 and Section 151 C.P.C. So petitions filed on behalf of the plaintiffs dated 28.10.2017 and 31.10.2017 Under Order XXXIX Rule 1,2 and Section 151 C.P.C. are hereby rejected.”

9. Aggrieved, the present appeal has been filed.

10. The main contention of the learned counsel for the appellants is/are that being in occupation of the said land for more than 30 years, they are entitled to the relief sought for by virtue of adverse possession. It is to be noted that the learned Court has observed that at one stage, they said that the they are in possession of the suit land for 50 years at other place they said 80 years and finally in the appeal they have come down to 30 years.



11. It is also an admitted fact that one of the appellant, i.e. the appellant no. 4, Rajendra Prasad Singh was an employee of the said Department and as such, was occupying one of the temporary flat that was made for the staffs of Executive Engineer. As he retired and had no other place to live, on compassionate ground, he was allowed to continue that gave him a leverage to accommodate some others too and claim the acquired land as their by virtue of adverse possession.

12. This fact has also been incorporated in the counter affidavit filed by the State in paragraph 7 wherein it has been specifically stated that they are in possession of the suit land more than 80 years but in the petition filed before the Executive Engineer, Building Division, Patna on 17.03.2016, their stand was that they are staying last 60 years whereas the petition filed on 22.09.2016, they scaled it down to 30 years. It clearly shows that they are encroachers and nothing else.

13. The map has also been attached with the counter affidavit to show that it is a campus of Building Division Office, Patna.

14. When confronted, learned counsel for the appellants submit that he has no other ground save and accept that of adverse possession.



15. This Court has gone through the facts of the case, the counter affidavit filed by the State as well as the reasoned order of the Court of learned Sub-Judge-XIII, Patna in Title Suit No. 254 of 2017 and do not find any error in the order dated 28.11.2017.

16. The M.A. No. 1097 of 2017 fails and is accordingly, dismissed.

I.A. No. 6710 of 2018

In view of the fact that the M.A. No. 1097 of 2017 stands rejected, the I.A. No. 6710 of 2018 has become infructuous and the same is accordingly dismissed.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2022
Transmission Date	NA

