

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2399 of 2020

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Dev Nandan Choudhary, S/o Late Shiv Nandan Choudhary, Resident of Kazi Bazar Hilsa, P.O. and P.S.-Hilsa, District-Nalanda, Pin-801302.

... .. Petitioner

Versus

1. The State of Bihar through the Collector, Nalanda.
2. The Collector, Nalanda at Biharsharif, Nalanda Collectorate at Biharsharif, P.O.-Biharsharif, P.S.-Bihar, District-Nalanda.
3. The Sub Divisional Officer, Hilsa, Hilsa Sub Division, P.O. and P.S.-Hilsa, District-Nalanda.
4. The Anchal Adhikari, Hilsa, Hilsa Anchal, P.O. and P.S.-Hilsa, District-Nalanda.
5. The Nagar Panchayat Hilsa through Executive Officer, P.O. and P.S.-Hilsa, District-Nalanda.
6. The Executive Officer, Nagar Panchayat Hilsa, P.O. and P.S.-Hilsa, District-Nalanda.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Bal Bhushan Choudhary, Advocate
For the State	:	Mr.Sajid Salim Khan (Sc25)
for Nagar Panchayat, Hilsa		Mr. Siddhartha Prasad, Advocate
		Mr. Om Prakash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

13 18-12-2023

Heard leaned counsel for the parties.

2. Writ petition has been filed for a direction to the respondent authorities to remove boring plant from the raiyati land of the petitioner bearing survey Plot No. 1576 appertaining to Khata No. 317, Thana No. 177, Mouza Hilsa, District Nalanda having an area of 19 Katha 17 dhur measuring 0.60 acre and further prohibiting them from installing over head water tank on the said land.

3. Case of the petitioner in brief is that Ex landlord Sayeed Akbar Hussain and others orally settled 0.60 acre land for cultivation in favour of Bandhdu Choudhary who happens to be the father of the petitioner and in pursuance of which



possession was delivered to him and accordingly the father of the petitioner came in possession thereof. Thereafter ex-land lord granted Hukumnama as memorandum of oral settlement in the name of elder son of settle Bandhu Choudhary namely Sheonandan Choudhary as per his request. However, on vesting of Jamindari in the State of Bihar, Bandhu Choudhary had been coming in continuous possession of the settled land and as per his possession and vesting return, Register II was prepared in the name of Sheonandan Choudhary (father of the petitioner).

4. It is further case of the petitioner that a proceeding under section 145 of the Code of Criminal Procedure was initiated against the father of the petitioner by one Prabhu Paswan and by an order dated 18.12.1974 passed in Case No. 36(MP)/72, Tr. No. 41/74 learned Executive Magistrate declared the possession of the land appertaining to Khata No. 317, Plot No. 1476 area 0.60 decimals in favour of the father of the petitioner. Being aggrieved by the said order, the second party Prabhu Paswan filed Criminal Revision No. 95/1975 before the this High Court which was dismissed vide order dated 11th May, 1978.

5. Learned counsel for the State has filed counter affidavit. It is stated that the entry made in survey Khatiyana has a presumptive value under section 103(B) of Bihar Tenancy Act, 1985. Since, the land in question is recorded as Gairmajaria Aam Pond and, therefore, it has presumption that the land is government land. He submits that to set aside the said presumption as per section 103(B) of the Bihar Tenancy Act, a suit has to be instituted under section 106 of the Bihar Tenancy Act and the party concerned has to file civil suit before the court of competent jurisdiction. In the instant case, the same has not



been done by the petitioner. Therefore, no objection given by the Respondent No. 4 with respect to nature of land, is on the basis of survey Khatiyani and the same is absolutely valid and proper.

6. It is further stated that the petitioner claims title over the said land on the basis of order passed under section 145 of the Code of Criminal Procedure as well as on the basis of rent receipts issued to him in respect of the said land. The order under section 145 of the Code of Criminal Procedure passed in favour of the petitioner as contained in Annexure 3 instituted by one Prabhu Paswan in which the State of Bihar was not even a party. Moreover, it is settled law of the land that the order under section 145 of the Code of Criminal Procedure is only with respect to the possession. It does not confer any title over it.

7. Learned State counsel submits that rent-receipts issued in favour of the petitioner on the basis of Jamabandi created also do not confer title. It has been consistent view of the Hon'ble Supreme Court as well Hon'ble High Court that entry in revenue records serves only fiscal purpose, i.e. , payment of land revenue. No ownership is conferred on the basis of such entry not any title is decided. The title can only be decided by the competent civil court which in the present case the petitioner has chosen not to approach. Even though the land in revenue records (the suit Khatiyani) is recorded government land (Gairmajarua Aam Pond). The said proposition that entry serves only fiscal purpose for payment of land revenue, has been decided by the Hon'ble Supreme Court in a catena of decisions.

8. The question as to whether land in question is a



raiya land of the petitioner or Gairmajara Aam Pond/Government land, is a question of fact and this dispute can conclusively be determined by a civil court and this Court in a writ jurisdiction cannot decide the right, title and ownership of the land in question.

9. Writ petition is accordingly disposed of with liberty to the petitioner to file proper suit before the civil court of competent jurisdiction.

(Prabhat Kumar Singh, J)

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