

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3003 of 2023

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1. Binay Kumar Mishra Son of Late Liladhar Mishra, Resident of Village-Nahas Rupauli, Block- Bisfi, Police Station- Bisfi, District- Madhubani.
 2. Tej Narain Mishra, Son of Late Laxmi Narain Mishra, Resident of Village-Nahas Rupauli, Block- Bisfi, Police Station- Bisfi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar the Principal Secretary Land Reforms Department, Government of Bihar, Patna.
2. The District Magistrate, Cum Collector, Madhubani.
3. The District Fishery Officer, Madhubani.
4. The Superintendent of Police, Madhubani.
5. The Block Development Officer, Bisfi Block, District- Madhubani.
6. The Circle Officer, Block Bisfi, District- Madhubani.
7. Bisfi Prakhanda Matasyjiwi Sahyog Samiti Limited, Kataiya, Bisfi, Madhubani, through its Secretary.
8. Sulekha Kumari, Wife of Bhola Sahani, Resident of Village- Ajnauli, Post-Badha, Block- Bisfi, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anant Kumar Mishra, Adv.
For the Respondent/s : Mr. Raj Kishore Roy, GP-18.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 19-07-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. The present writ petition has been filed seeking direction to the respondents to deliver the physical possession of the Tank/Pond appertaining to Khata No.293, Khesra No.3813, Area 2 bigha 2 katha 3 dhur, situated in Village Nahas Rupauli, Block Bisfi, District Madhubani.

3. Learned counsel for the petitioner submits that the



land which has been continuously being settled to different persons for the purpose of fishing is in the nature of tank/ pond appertaining to Khata No.293, Khesra No.3813, Area 2 bigha 2 katha 3 dhur, situated in Village Nahas Rupauli, Block Bisfi, District Madhubani which is the subject matter of Title Suit No.44 of 1986 in which final judgment and decree has been passed on 30.08.1996. Against the said judgment and decree the defendant-State has preferred Title Appeal No.63 of 1996 which was ended/dead on 07.12.2018 and according to him the final judgment and decree acquired finality. Learned counsel for the petitioner submits that even after losing in the title appeal, the State is continuously allotting the land of petitioner to different persons on which tank/ pond is situated. He further submits that petitioner has filed the present writ petition seeking direction that respondents be restrained not to settle his land/pond which is situated on his *Khatiyani* land to anyone in the light of said judgment and decree.

4. Learned counsel for the State submits that there is a Statute come in the year 2006-07 namely Bihar Jalkar Measurement (Amendment) Act, 2007 in which the power against the settlement of *Jalkar* long term and short term lies against the Divisional Commissioner.



5. In response, learned counsel for the petitioner submits that under this Statute the petitioner has no remedy at all due to the reason that the alleged pond/ Jalkar does not belong to the State and it has been decided in favour of petitioner by the Court of competent Civil Court which acquires finality in Title Appeal No.63 of 1996 in the year 2018.

6. In this circumstances, the remedy available to the petitioner is to file execution of said judgment and decree before the Court of competent Civil Court.

7. In this view of the matter, the present writ petition is disposed off directing the petitioner to avail the remedy available under the Statute by way of filing execution. Petitioner is also at liberty to raise the claim of means profit.

(Dr. Anshuman, J.)

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