

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9256 of 2020

1. Rajendra Prasad Singh Son of Hriday Narayan Singh Resident of Village-Bhramarpur, P.S.- Bihpur, District- Bhagalpur.
2. Bageshwar Prasad Singh Son of Mod Narayan Singh Resident of Mohalla-Gurunanakpura Colony, P.S.- Sabour, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Animal Husbandry and Fisheries, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Animal Husbandry and Fisheries, Govt. of Bihar, Patna.
3. The District Magistrate-Cum- Collector, Bhagalpur.
4. The District Fisheries Officer-Cum- Chief Executive Officer, Bhagalpur.
5. The Circle Officer, Narayanpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar, Adv.
For the Respondent/s	:	Mr. Sajid Salim Khan, (SC)
For the Intervenor	:	Mrs. M. Chatterjee, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-08-2023

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The present writ application has been filed directing the respondent authorities, particularly, the respondent District Fisheries Officer, Bhagalpur and respondent Circle Officer, Narayanpur, District- Bhagalpur to execute the land of petitioners appertaining to Mauza- Nagarpara ½, Khata No. 54, Khesra No. 1257 which has been illegally included in the list of Public Sairat, although the same is private Sairat of the petitioners for which the judgment and decree has been passed

by the Competent Court *i.e.* Title Suit No. 45 of 2004.

3. The further prayer has been made directing the respondent to restrain the petitioners from acting upon and taking any action in pursuance of letter no. 875 dated 30.07.2019 issued by the respondent Circle Officer, Narayanpur addressed to the respondent District Fisheries Officer, Bhagalpur and for any other remedy for relief(s).

4. Learned counsel for the respondent no. 6 and State raised preliminary objection in this case and submits that the petitioners have moved with the same relief(s) before this Hon'ble Court twice. Firstly, in C.W.J.C. No. 14062 of 2014 which was disposed of vide order dated 05.09.2014 in which there was a clear cut finding of this Hon'ble Court that:

“This Court cannot examine the issue with regard to right and title over the land, it can only be decided by the Civil Court.

The counsel for the petitioner submits that the petitioner has filed a representation dated 19th February, 2014 before the District Magistrate, Bhagalpur but the same is still pending.

Let the District Magistrate, Bhagalpur examine the case, obtain necessary report from a reasonable higher officer and take a final decision on merit within a period of six

months from the date of receipt/ production of a copy of this order. The petitioner, if so advised, may file a separate representation annexing the relevant records in support of his case.

Accordingly, this writ petition is disposed of.”

5. Subsequently, the petitioners have moved again in another C.W.J.C. No. 13863 of 2017 which was disposed of vide order dated 29.06.2018 in which this Hon’ble Court has pleased to hold that:

“I am of the view that this Court cannot decide that the water shade standing on Khesra No. 538A, Khata No. 247, Area 296 decimal of Jamabandi No. 374, Tauzi No. 384 is raiyati land of the petitioners and there was no Sairat. The appropriate remedy is before the Civil Court which can decide the nature of land of the petitioners. Accordingly, I dispose of this writ petition with liberty to the petitioners to file a suit before the Civil Court for the relief(s) sought for in this writ petition.

This writ petition is accordingly disposed of.

It goes without saying that this Court has not expressed any opinion on the merit of the case.”

6. In response of the submissions made, counsel for the petitioners submits that he has annexed Annexure- 7 in his reply, which is circular of the Government of Bihar dated 11.11.2014, according to Clause- 3 (*chha*), the petitioners entitled their claim and submits that their claim has absolutely covered under the said provision.

7. Upon going through the submissions made by the parties, this Court is of the view that the plea of the present case has been duly barred due to the provisions of constructive *res judicata* as mentioned in *Explanation IV.*, Section 11 of the C.P.C. which states as follows:

“Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

and further barred by *Explanation VIII.*, Section 11 of the C.P.C. and in this view of the matter that the petitioners have not opted to prefer L.P.A. even after categorical decision of this Court to avail remedy before the Civil Court, this Court has no option but to dismiss this writ application stating that the petitioners have remedies to avail their right by way of filing civil suits but they have opted to move thrice before the writ Court. They shall be at liberty to take legal recourse available to them.

8. With this observation, the present writ application stands dismissed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2023
Transmission Date	NA