

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18234 of 2015

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Nand Kishor Prasad Son of Late Mahendra Prasad Resident of village -
Alahdapur, P.S. and District - Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Welfare Department, Government of Bihar, Patna
3. The Principal Secretary, Panchayati Raj Department Government of
Department, Patna
4. The District Magistrate, Vaishali
5. The District Development Commissioner, Vaishali
6. The Sub - Divisional officer, Hajipur, Vaishali
7. The Land Acquisition Officer, Vaishali
8. The Executive Engineer, Local Area Engineering Organization, Vaishali at
Hazipur
9. The District Panchayatir Raj Officer, Vaishali at Hazipur
10. The Block Development officer, Vaishali, District Vaishali
11. The Junior Engineer Block - Vaishali, Distt Vaishali
12. The Circle officer, Vaishali, District Vaishali
13. Ashok Ram, Panchayat Vikash Mitra Resident of village - Simara, P.S. and
District - Vaishali
14. Shiv Lal Ram Son of Late Bhola Ram
15. Sanjay Ram Son of Shiv Lal Ram Respondent No. 14 to 15 resident of
village - Alahdadpur, Panchayat - Chiakalahadad, P.O. and P.S. District -
Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Rajpati
For the Respondent/s	:	Mr. Ajay Behari Sinha, GA-8
		Ms. Kalpana, (AC to GA-8)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 12-09-2023

Heard learned counsel for the petitioner and

learned counsel for the State.

2. The present writ application has been filed by the

petitioner to return the land bearing Khata No. 219, Khesra No. 264, Area 4 decimal situated in *Mauza-* Alahdadpur, District- Vaishali.

3. Learned counsel for the petitioner submits that the said land bearing Khata No. 219, Khesra No. 264 total area 11 decimal situated at *Mauza-* Alahdadpur, District- Vaishali, whose *khatian* and rent receipt was in the name of the petitioner has been donated to the Hon'ble Governor, Government of Bihar by virtue of the registered gift deed on 03.12.2001 for the construction of *Gram Panchayat Bhawan*.

4. Learned counsel for the petitioner further submits that the said donation was made for the purpose of construction of *Gram Panchayat Bhawan* but the said *Gram Panchayat Bhawan* has not been constructed. Thereafter, the petitioner has filed the representation before the District Magistrate, Vaishali requesting him to return his land as *Gram Panchayat Bhawan* has not been constructed.

5. Learned counsel for the State submits that he has filed counter-affidavit through the Principle Secretary, Panchayati Raj Department, Government of Bihar, Patna and submits that in the meeting of *Gram Sabha* of *Gram Panchayat*, the *Gram Panchayat* itself decided vide dated 13.08.2004 not to

construct the *Gram Panchayat Bhawan* on the said land and the *Gram Panchayat* has decided to construct the said *Gram Panchayat Bhawan* at other place.

6. It has been submitted that the petitioner has executed land in favour of the Government of Bihar but he has not annexed any document in support of his pleading by which it appears that he has donated land in favour of the Government of Bihar. It has also been submitted that the decision of construction of *Gram Panchayat Bhawan* has to be made completely in accordance with the guideline of the Panchayati Raj Department, Government of Bihar, Patna in Memo No. 4951 dated 21.08.2012 and subsequently vide Office Order No. 73 dated 06.03.2014, letter no. 7519 dated 26.09.2014 and letter no. 4721 dated 07.07.2015.

7. Learned counsel for the State further submits that the construction of *Gram Panchayat Bhawan* is absolutely an executive policy. Counsel submits that the decision to return the land cannot be taken from his department rather in this regard, the Principal Secretary of Revenue & Land Reforms Department, Government of Bihar, Patna, the Principal Secretary of Registration and Excise Department, Government of Bihar, Patna as well as, the Secretary-cum-L.R. Law

Department, Government of Bihar, Patna are the only authorities who can decide this matter that a piece of land which has been registered in favour of the Governor can be returned back or not.

8. Learned counsel for the State further submits that though the alleged gift deed is not on record, therefore, it is very difficult to say that what was the content written therein but he submits that legally the concept of gift has been discussed under Section 122 to 129 of Chapter VII of the Transfer of Property Act, 1882 [Act 4 of 1882] (hereinafter referred to as 'the Act of 1882'). Counsel further submits that Section 126 of the Act of 1882 directly deals the situation under which a gift may be suspended or revoked. Counsel further submits that the situation dealt by the petitioner does not fulfill the ingredients laid down under Section 126 of the Act of 1882.

9. In response thereof, counsel for the petitioner has relied on a case of *S. Sarojini Amma Vs. Velayudhan Pallai Sreekumar in SLP (C) No. 35515 of 2017* in which the gift was directed to be revoked.

10. From the pleadings of the parties, upon hearing the arguments and going through the records, it is very interesting for this Court that both the parties are contesting this case on a document *i.e.* alleged to be the gift executed by the

petitioner in favour of the Governor, the State of Bihar. But unfortunately, none of the parties have produced the alleged gift deed on record but by their argument, it transpires that there are contest and controversy in this issue.

11. In this view of the matter, this Court is of the view that it shall not be appropriate for this Court to decide on a legal instrument which is not placed before this Court and as such, this Court dismissed this writ application granting liberty to the petitioner that he shall file a civil suit for his grievance raising all the points mentioned in the present writ petition along with the copy of gift deed in question and the dismissal of this writ petition shall not effect the suit of the petitioner in any manner.

12. With this direction, the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2023
Transmission Date	NA