

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18615 of 2014

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Sharwan Kumar, Son of Late Rajendar Prasad, Mohalla- Mathuria, P.S. Laheri
(Murarpur), District Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Collector-com-District Magistrate, Nalanda.
3. The Special Duty Officer, Biharsharif, Nalanda.
4. The Additional Collector, Biharsharif, Nalanda.
5. The Circle Officer, Biharsharif, Nalanda.
6. The Special Officer, Bihar Municipal Corporation, Biharsharif, Nalanda.
7. The Bihar Electricity Board through its Chairman, Bidyut Bhawan, Patna.
8. The Executive Engineer, BSEB, Bihar Sharif, Nalanda.
9. The Junior Engineer, BSEB, Bihar Sharif, Nalanda.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11307 of 2016

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Sharwan Kumar Son of Late Rajendar Prasad Resident of Mohalla -
Mathuria, P.S. - Laheri (Murarpur), District Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Collector-cum-District Magistrate, Nalanda.
3. The Officer on Special Duty, Biharsharif, Nalanda.
4. The Additional Collector, Biharsharif, Nalanda.
5. The Circle Officer, Biharsharif, Nalanda.
6. The Mayor, Municipal Corporation, Biharsharif, Nalanda.
7. The Nagar Aayukt, Municipal Corporation, Biharsharif, Nalanda.
8. The Town Inspector, Municipal Corporation, Biharsharif, Nalanda.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 18615 of 2014)

For the Petitioner/s	:	Mr.Surendra Kishore Thakur, Advocate
	:	Mr. Ashutosh Kumar, Advocate
For the Respondent/s	:	Mr. Saroj Sharma, AC to AAG 5
For Corporation	:	Mr. Gyan Prakash Ojha, Advocate



For respondents no.6to 9 : Mr. Vinay Kirti Singh, Sr. Advocate
: Mr. Akhileshwar Singh, Advocate
(In Civil Writ Jurisdiction Case No. 11307 of 2016)
For the Petitioner/s : Mr.Surendra Kishore Thakur, Advocate
: Mr. Ashutosh Kumar, Advocate
For the Respondent/s : Mr. Saroj Sharma, AC to AAG 5
For Corporation : Mr. Gyan Prakash Ojha, Advocate
For respondents no.6to 9 : Mr. Vinay Kirti Singh, Sr. Advocate
: Mr. Akhileshwar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-06-2023

1. The first writ petition has been filed for quashing the order dated 18.07.2014, passed by the District Magistrate, Nalanda, whereby and whereunder the appeal filed by the petitioner has been dismissed and the order dated 03.09.2001, passed by the Circle Officer, Biharsharif, Nalanda in connection with Encroachment case no. 4 of 1999 has been upheld, whereby the petitioner has been directed to remove the encroachment from the land appertaining to *Khata* no. 48, *Khesra* no. 365, situated at village- *Chak Hajiyain* (also known as Ramchandrapur), Biharsharif at Nalanda.

2. As far as the second writ petition is concerned, the same has been filed for restraining the respondent- Biharsharif Municipal Corporation from storing/ Dumping Garbage and from storing building materials in the aforesaid land in question.

3. It is the contention of the learned counsel for the petitioner of the aforesaid two cases that the vendee of the ancestor of the petitioner namely Parmeshwar Dayal, who had



purchased 15 decimals of land appertaining to the aforesaid *Khesra* no. 365, had filed two title suits bearing Title Suit no. 41 of 1977 and Title Suit no. 116 of 1978, for grant of permanent injunction against the defendants restraining them from interfering with his peaceful possession over the land in question and in the said suits, the State of Bihar as also one Khublal Mahto and the father of the petitioner/ the petitioner had been made party defendants. It is also submitted that the aforesaid two suits were allowed in favour of the plaintiff namely Parmeshwar Dayal by a judgment dated 23.08.1986, passed by the learned court of Additional Subordinate Judge-III, Biharsharif (Nalanda) whereby and whereunder it has been declared that the plaintiffs have acquired title over the suit land and consequently, the possession over the same was also declared in their favour. By the aforesaid judgment dated 23.08.1986, the State of Bihar was also directed to give possession of the suit land in question after filling the same and thereafter not to interfere with the peaceful possession of the plaintiffs over the suit land. The said judgment dated 23.08.1986 and decree dated 22.09.1986 was challenged by one of the private defendants i.e. Khublal Mahato by filing appeals bearing Title Appeal no. 54 of 1986 and Title Appeal no. 55 of 1986,



which were dismissed by the learned court of Additional District Judge-IIIrd, Nalanda at Biharsharif by a judgment dated 22nd September, 1993. Thereafter, the aforesaid judgment dated 22.09.1993, passed in Title Appeals no. 54/ 55 of 1986 was challenged before this Court by filing Second Appeal no. 635 of 1993, which has also stood dismissed vide order dated 25.06.1998, passed by a co-ordinate Bench of this Court. It is thus submitted that the right, title and interest of the petitioner over the aforesaid land in question has been perfected, inasmuch as in the aforesaid judgment dated 23.08.1986, it has been categorically observed in paragraph no. 25 that the suit land was settled with the vendor of the plaintiff, jamabandi returns were submitted by the landlord in their name and even the State of Bihar has recognized them as *raiya*s and issued receipts in their favour, thus, as far as the land appertaining to *Khesra* no. 365 is concerned, the right, title and interest of the petitioner/ his ancestors cannot be disputed.

4. *Per contra*, the learned counsel appearing for the respondent- Biharsharif Municipal Corporation has submitted, by referring to the counter affidavit filed in the second case that though in the year 1871, the municipality was established for providing civil amenities to the local residents of the Biharsharif



town, however, subsequently in the year 2002, the said Municipality was upgraded as Biharsharif Nagar Parishad and was again upgraded in the year 2011 as Biharsharif Municipal Corporation, nonetheless the Municipality was not arrayed as party defendant in the aforesaid title suits, thus the aforesaid judgment dated 23.08.1986, passed by the learned trial court is not binding on the Municipality/ Biharsharif Municipal Corporation. It is also submitted that as per ***Section 100 of the Bihar Municipal Act, 2007***, the movable and immovable properties, as specified therein within the municipal area, not belonging to any government department or statutory bodies will vest in the Municipality, unless the State Government directs otherwise, by issuing appropriate notification with regard to the same. It is also submitted that the plot in question is an area where a river was flowing namely Panchane river, along with a branch of Kazi Nadi and the same has been recorded in the survey *Khatiyan* as *Gairmajarua Aam Nadi*. It is also submitted that by efflux of time, the branch of Panchane river i.e. *Kazi Nadi* also became dry and took the shape of narrow *Nala* while the remaining portion of the said river started being used as *Aam rasta* and even a road has been constructed over the same by the P.W.D. Department. It is also submitted that the



respondent- Bihar Sharif Municipal Corporation has filed a title suit bearing Title Suit no. 202 of 2016, before the learned court of Sub Judge-I, Bihar Sharif, hence, the final judgment of the same be awaited. Nonetheless, it is contended that the Bihar Sharif Municipal Corporation has got no objection, in case the interim order dated 15.12.2014, passed in the first writ petition is continued as also *status quo* existing as on today, is maintained till the final disposal of the aforesaid Title Suit no. 202 of 2016.

5. At this juncture, the learned counsel for the petitioner as also the learned counsel appearing for the respondent- State of Bihar have submitted that they also do not have any objection to the aforesaid proposal put forth by the learned counsel appearing for the Bihar Sharif Municipal Corporation.

6. Having regard to the facts and circumstances of the case and in terms of the consensus arrived at in between the parties, I deem it fit and appropriate to direct that *status quo* existing as on today *qua* the aforesaid plot in question, bearing *Khesra* no. 365, shall be maintained *qua* the parties, neither any garbage shall be dumped nor any building material shall be stored and no construction shall be made over the said land,



apart from there being stay of the order dated 18.07.2014, passed by the District Magistrate, Nalanda in Encroachment case no. 4 of 1999, till the final judgment is passed in the aforesaid Title Suit no. 202 of 2016, pending before the learned court of Sub-Judge-I, Biharsharif.

7. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.06.2023
Transmission Date	NA

