

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1944 of 2017

Hindustan Petroleum Corporation Limited and Ors

... .. Petitioner/s

Versus

1. Rajarshi Kumar and Ors Son of Late Saroj Kumar,
2. Pushkar Krishnan, Son of Sri Rajarshi Kumar, Both resident of Village-Bihta, Post Office and P.S.- Bihta, District- Patna.
3. Indian Railway through its General Manager, East Central Railways, Hajipur, P.S.- Hajipur, District
4. The State of Bihar through the Collector, Patna Collectorate, Patna, P.S.- Gandhi Maidan, Patna.
5. The Land Acquisition Officer, Patna Collectorate, Patna, P.S.- Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Prakash
For the Respondent/s	:	Mr.R.K. Roy- Gp-18
For the U.O.I.	:	Mr. Manoj Kumar Singh
		Mr. Ankit Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 31-10-2023 Heard learned counsel for the petitioner, learned counsel for the respondent including the learned senior counsel for the private respondents, learned counsel for the Railways and learned counsel for the State.

2. This application has been filed for quashing the order dated 11.08.2017 passed by the learned Sub-Judge, 1st Danapur in Title Suit No. 329 of 2016 by which the petition dated 29.05.2017 filed by the plaintiffs for appointment of Survey Knowing Pleader Commissioner has been allowed.

3. It has been submitted by the learned counsel for the petitioner that the stage for appointment of Survey Knowing



Pleader Commissioner has not yet arisen and he relies upon the Judgment of this Court in ***C.W.J.C. No. 19413 of 2011 (Bal Manohar Jalan and Others Vs. Dr. Braj Nandan Sahay and Others)*** dated 03.04.2012 and submits that the issue of appointment of Survey Knowing Pleader Commissioner shall be considered after the evidence is lead by the parties.

4. Learned senior counsel for the respondents has relied upon a Judgment of this Court in ***Civil Misc. Jurisdiction No. 1374 of 2014 (Ram Sanjiwan Choudhary Vs. Arun Kumar Rai and Others)*** dated 04.09.2023 and has submitted that the facts of the present case are similar to the facts of the case in ***Ram Sanjiwan Choudhary Vs. Arun Kumar Rai and Others (Supra)*** and in view of the law laid down by this Court in ***Ram Sanjiwan Choudhary Vs. Arun Kumar Rai and Others (Supra)***, this application may be dismissed.

5. This Court in the Case of ***Ram Sanjiwan Choudhary Vs. Arun Kumar Rai and Others (Supra)***, relying on the various other judgments of the Supreme Court in Paragraph 17 and 18 has held as under:-

17. From the aforesaid decisions, it is clear that the appointment of Survey Knowing Pleader Commissioner under Order 26 Rule 9 can be ordered when it is found that local investigation may be required or proper for the purpose of elucidating any matter in dispute, ascertaining the



market value of the property. The Survey Knowing Pleader Commissioner appointed under the Code has to make survey/investigation of the disputed plot and submit a report to the Court and he is not doing a judicial act but is doing a ministerial act and his report can be objected by either of the parties. The report of the Survey Knowing Pleader Commissioner can be relied upon by the Court or may be rejected by the Court. The report of the Survey Knowing Pleader Commissioner is only an opinion not a finding, which may come to the aid of the Court in deciding the dispute and the actual state of affairs.

18. In the present case, the dispute between the parties is with regard to a road in the plot which was bought by the parties together, in which shops and houses have been constructed by the parties and the respondents-original defendants are creating hindrance in using the said road in the plot allotted, which was for the common use of the parties. Hence, considering these facts, in my opinion, the appointment of Survey Knowing Pleader Commissioner is necessary to decide the dispute between the parties.

6. In view of the aforesaid discussions, this application is dismissed. The Court below is directed to proceed in the matter.

7. With the consent of the parties, Shri Vidya Nand Singh, Survey Knowing Pleader Commissioner who practices in Civil Court, Patna and who is in the list of Survey Knowing Pleader Commissioner maintained by the District Judge, Patna is appointed as Survey Knowing Pleader Commissioner in Title Suit No. 329 of 2016.



8. The Survey Knowing Pleader Commissioner will file his report as per the writ issued by the Sub-Judge, Danapur in Title Suit No. 329 of 2016.

9. The Survey Knowing Pleader Commissioner will file his report within three months from the date of receipt of the writ from the Court of Sub-Judge and thereafter the Court below will proceed with the title suit and decide the same within one year after the submission of report of the Survey Knowing Pleader Commissioner.

With the aforesaid directions, this application stands dismissed.

(Sandeep Kumar, J)

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