

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19552 of 2018

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Ranjay Kumar Singh Son of Radha Raman Singh, Resident of Village-
Sujatpur, P.S.- Madhwapur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate-cum-Collector, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The Sub-Divisional Magistrate-cum-Sub Divisional Officer, Sub-Division-
Benipatti, District- Madhubani
5. The Deputy Collector, Land Reforms, Benipatti, District- Madhubani.
6. The Circle Officer, Circle Madhwapur, District- Madhubani.
7. The Sub-Divisional Police Officer, Benipatti, District- Madhubani.
9. Tilak Sada, Son of Sukhnandan Sada,
10. Jainarayan Sada, Son of Amarit Sada,
11. Kapleshwar Sada, Son of Ramphal Sada,
12. Rakesh Sada, Son of Bashisth Sada,
13. Chhote Sada, Son of Chhedi Sada,
14. Vilash Sada, Son of Batohi Sada,
15. Sukhnandan Sada, Son of Gopi Sada,
16. Kamlesh Sada, Son of Mahendra Sada,
17. Utim Sada, Son of Mahendra Sada,
18. Mehi Sada, Son of Triveni Sada,
19. Subansh Sada, Son of Gonaur Sada,
20. Sadhu Sada, Son of Batohi Sada,
21. Narayan Sada, Son of Manchit Sada,
22. Ram Kishun Sada, Son of Rajendra Sada,
23. Rajendra Sada, Son of Manchit Sada, Respondent no.9 to 23 resident of
Village- Sujatpur, P.S.- Madhwapur, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar, Adv.
For the Respondent/s	:	Mr. Md.Khurshid Alam -AAG12

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 22-09-2023

I.A. No. 8595 of 2018

Counsel for the petitioner submits that the present I.A. No. 8595 of 2018 has been filed for amendment in 3rd line of paragraph-4 of the writ petition as due to typographical error, total area of land 1 acre 58 decimal has been wrongly typed in place of total area of land 2 acre 2 decimal.

2. Counsel for the State has no objection for same.

3. As such, the said amendment in 3rd line of paragraph-4 is directed to be corrected in course of the day.

Re:- C.W.J.C. No. 19552 of 2018

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

5. Counsel for the petitioner has filed this writ petition for quashing of the order dated 20.04.2018 passed by the Collector, Madhubani in Misc. (Encroachment) Appeal Case No. 47 of 2016-17.

6. Counsel for the petitioner submits that petitioner has earlier moved this Hon'ble Court in C.W.J.C. No. 13956 of 2015 in which vide order dated 22.09.2016 direction was made to the petitioner to file fresh representation on behalf of the petitioner and the District Magistrate was directed to pass speaking and reasoned order after granting opportunity to

petitioner and the then respondent nos. 9 to 23.

7. Counsel submits that the final order has been passed by the District Magistrate on 20.04.2018 which is under challenge before this Court. Counsel further submits that in the said order, it has been admitted that C.S. Khata No. 98 and 120, Plot No. 86, 85, 89 has been recorded as *bakhast malik Gairmajarua khas* and R.S. Khata No. 355, Plot No. 443 and 456 recorded as *Anabad Bihar Sarkar* whereas rest Khata No. 07, 317, 139, 144, 207, 192, 298 and Plot No.451, 452, 450, 449, 448, 446 and 444 are recorded in the name of the petitioner and his co-seller. Counsel also submits that it has come that proceeding under Section 106 of the B.T. Act vide Case Nos. 1223 of 1987 and 2575 of 1987 has been passed in his favour. Counsel submits that even then, the finding has been given by the District Magistrate i.e., C.S. and R.S. khatian, the land in question has been recorded as *bakhast Malik Gairmajarua Khas* and *Anabad Bihar Sarkar*. Therefore, according to him, this order is bad in law and instead of passing this order, the direction for possession in favour of the petitioner should be granted.

8. Counsel for the State submits that the order passed by the District Magistrate is an speaking and reasoned order.

Counsel submits that the counter-affidavit has been filed and in the counter-affidavit, it has been categorically mentioned that the order passed in Case Nos. 1223 of 1987 and 2575 of 1987 were *ex-parte* order in which stand of the State has not been placed. In that view of the matter, the State has preferred Civil Appeal No. 01 of 2019 before the Sub-Judge-I, Madhubani for setting aside the said *ex-parte* order which is pending.

9. Counsel further submits that in compliance of the Court's order, a team of 4 Officials under S.D.O., Benipatti has been directed to visit who has submitted a report, according to which, the land in dispute is vent of a pokhar on which 38 persons are residing by construction of hut and house made up of soil. It has come that they are residing since last about 20 years on the said land to which the petitioner wants to vacate by the order passed by the revenue court or by this Hon'ble Court.

10. Counsel further submits that the finding of the District Magistrate, Madhubani that in the light of the claims made by the parties, it shall not be appropriate to pass any order in favour of anyone as on the one hand, the petitioner is claiming the land by virtue of *ex-parte* order and on the other, respondents are residing since last 20 years by constructing their house and huts.

11. In this view of the matter and in the light of the submissions made, this Court is of categorical opinion that only competent Civil Court shall be the competent authority who upon going through the enter documents of the parties as well as by taking their evidences shall decide that whether the right and title are in favour of petitioner or in favour of the respondents and particularly, the possession is the adverse possession or it is permissive possession.

12. In this view of the matter, the present writ petition is hereby disposed of without interfering in the order of the District Magistrate, Madhubani, granting liberty to the petitioner to file appropriate suit before the competent Civil Court.

(Dr. Anshuman, J.)

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