

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1122 of 2020

-
1. Renu Kumari Sinha, Wife of Kundan Kumar Sinha, Resident of Ward No. 41, Mohan Eghu, P.S. Sahebpur Kamal, District- Begusarai.
 2. Abhiram Kumar, Son of Lala Ladli Saran Sinha, Resident of Ward No. 5, Sanha, P.S. Sahebpur Kamal, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms and Revenue Department, Patna.
2. The Commissioner, Munger Division, Munger.
3. The District Magistrate, Begusarai.
4. The Block Development Officer, Sahebpur Kamal, Begusarai.
5. The Circle Officer, Sahebpur Kamal, Begusarai.
6. The Panchayat Secretary, Sanha West Grampanchayat, Sahebpur Kamal, Begusarai.
7. Poonam Devi, Mukhiya, Gram Panchayat Raj, Sanha West, Sahebpur Kamal, Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ram Sumiran Rai, Advocate Mr. Ramakant Akela, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy, GP-18 Mr. Anshul, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 01-05-2023

1. Heard learned counsel for the petitioners, learned counsel for the State respondents and learned counsel for respondent nos.6 and 7.

2. The petitioners have filed the instant application for the following relief(s):-

“i. For issuance of an appropriate writ/s, order/s, Direction/s to the concerned respondents especially the respondent no. 6 & 7 not to construct



road on Private land of the petitioner situated in Mauja- Sanha, Khata No. 69, Khesra No. 3694, Tauzi No. 628, Thana No. 625 admeasuring about 4 katha 5 dhur, which they purchased by registered sale deed dated 01.08.2011 from Anil Kumar Prasad.

ii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondent not to construct the road at the instance of respondent no. 6 and 7 at the private land of the petitioners as mentioned in Para graph No. 1(i) of the petition without acquiring the same in accordance with law and paying the suitable compensation to the petitioners.

iii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondent the Principal Secretary, to take action against erring officials of the Revenue Department in creating ruckus over the land of the petitioners by taking a decision in Aam Sabha for construction of road on the private land of the petitioners.

iv. To pass such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of this case.”

3. The subject matter of the instant writ application is the land measuring an area of 4 *kathas* 5 *dhurs*, situated in *Mauja- Sanha, Khata no.69, Khesra no.3694, Tuauzi no.628 and Thana no.625.*

4. The case of the petitioners is that the land in



question was settled in favour of their vendor from whom the petitioners purchased the land by a registered sale deed dated 1.8.2011. Learned counsel for the petitioners relies on the order of settlement dated 30.3.1977, passed in revenue case in favour of the petitioners' vendor. On an application filed before the Circle Officer for mutation, *jamabandi* was created. The petitioners started to pay rent and rent receipts were issued in the petitioners' favour. Learned counsel further submits that the land possession certificate has also been issued in the petitioners' favour. The respondent authorities in collusion have constructed the PCC road on the petitioners' land and thus either the road be removed or else the same land in question be acquired in accordance with law and compensation be paid.

5. Learned counsel for the respondents, especially learned counsel appearing for respondent nos.6 and 7, seriously dispute the contention raised by learned counsel for the petitioners. Learned counsel refers to an affidavit filed on behalf of respondent no.5, and submits that a categorical statement has been made therein that the PCC road has not been constructed over the petitioners' land. Various other points have been raised by the respondents as to the manner in which the land was settled in favour of the petitioners' vendor, the area of the land



settled, the sale deeds of different times executed by him etc.

6. It further transpires that pursuant to the order of this Court dated 21.1.2020, a report was submitted by the Anchal Amin, Sahebpur Kamal, with respect to an inspection carried out on 15.7.2022. The report was addressed to the Circle Officer, Sahebpur Kamal and has been brought on record as annexure to the reply of the petitioners to the counter affidavit filed by respondent no.5.

7. Having heard learned counsel for the parties and having perused the material on record, in the opinion of the Court, the dispute in the instant case can be settled effectively by measurement of the land in question.

8. As this stage, it would be relevant to refer to the Tenancy Rules prescribed by the government under section 26B, 88A and 88G of the Bihar Tenancy Act, 1885 and more particularly Rule 23 thereof, which is quoted herein below for ready reference:-

“23. Measurement of lands where necessary, and deposit of cost thereof.-

[(1)] If the area of the land has not been already ascertained by measurement made by competent agency under the authority of Government or, if for sufficient reason a further measurement is considered desirable, the officer shall order, the lands to be measured and shall



estimate the cost of measurement in accordance with the Rules for the measurement of lands in partition cases, and shall require the application to amount either at once or in such instalments as he may deem fit.

*[(2)(i) Any person may file a petition in **Form-36** for the measurement of his raiyati land before the Anchal Adhikari of that area or through online. After receipt of such petition along with Amin fee for the measurement of raiyati land, the Anchal Adhikari will ensure measurement of such land within 60 working days from the date of deposit of Amin fee. Amin fee, as fixed by the Government, will be deposited by the applicant through the nazir receipt or through online in the Anchal Nazarat. In such cases, in which petition is filed for immediate measurement, the petitioner will have to deposit Amin fee in the Anchal Nazarat as fixed by the Government and after issuance of Nazir Receipt, measurement of land will be ensured by the Anchal Adhikari within maximum seven working days.*

(ii) In such cases, where law and order problem is involved, such land will be measured at the instance of Revenue Officer not below the rank of Deputy Collector Land Reforms without realizing Amin fee. After measurement of land by the Anchal Amin, measurement report will be submitted by the Amin with map within three working days. Anchal Amin will also enclose Field Book with his measurement report and submit the same in the Anchal office. Measurement can be done by conventional jarib, ETS or any other available



modern technology.

(iii) In such cases, where Anchal Adhikari feels that boundary raiyats should be present at the time of measurement of any raiyati land by the Amin, he shall issue notices to boundary raiyats informing them the date and time of measurement.”

*(3) **Appeal.**-(i) Any person aggrieved by the measurement of land by the Amin as per order of the Anchal Adhikari, may file an appeal against the measurement of land by the Anchal Amin/ measurement report of Anchal Amin in the court of Deputy Collector Land Reforms within 30 working days from the date of measurement of the land or submission of measurement report by the Anchal Amin which will be disposed of after hearing concerned parties within 30 working days by the Land Reforms, Deputy Collector. In cases, where appeal is not filed within 30 working day. the appellant will enclose delay condonation petition mentioning reasons of delay with the appeal petition. If the Deputy Collector Land Reforms is satisfied that there are sufficient reasons for the delay, he may condone the delay in filing appeal. If Deputy Collector Land Reforms is satisfied after hearing concerned parties that re- measurement is required, then he will declare Amin's report as null and void and order for re-measurement of land in such cases jointly by more than one Amin. If Deputy Collector, Land Reforms orders for re-measurement, then the appellant will have to deposit fixed Amin fee in the Nazarat of Deputy Collector, Land Reforms within 7 working days from the date of passing order by the*



Deputy Collector Land Reforms and in such cases land will be re-measured by the joint team of Amins within 30 working days from the date of deposit of Amin fee. If Deputy Collector, Land Reforms is not satisfied with the measurement report submitted by the joint team of Amins, then he will order for re-measurement of such land by another joint team of Amins.

(ii) If an appeal against the Amin's measurement report is filed, the Land Reforms Deputy Collector shall call for the case record from the Circle Officer. After hearing concerned parties, the Land Reforms Deputy Collector will pass his order within 30 working days.

(iii) It will be mandatory to affix non-judicial stamp of Rs. 50 on every Memorandum of Appeal.]”

9. Having heard learned counsel for the parties it is directed that the petitioners shall file a petition along with all supporting documents and a copy of this order before the authority concerned under the aforesaid Rule and on filing of the same, the authority concerned shall proceed to issue notice to the necessary parties, examine the documents and carry out the measurement of the land in question, at the earliest, preferably within a period of four months from the date of its filing.

10. In case, any person is aggrieved, the aggrieved



party will have the liberty to file an appeal as provided under Rule 23(3) as quoted herein above.

11. It is further directed that if on measurement it is found that the PCC road has been constructed on the land/portion of the land of the petitioner, the respondent authorities, especially the District Land Acquisition Officer shall proceed to acquire the land which has been used in construction of the PCC road and to pay compensation within a period of four months of passing of the order in the measurement report.

12. This writ application stands disposed of with the above observations and directions.

(Partha Sarthy, J)

avinash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.05.2023
Transmission Date	N/A

