

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2421 of 2023

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1. Subhash Chandra Jha Son of Late Triveni Kant Jha, Resident of Village and P.O.- Kariyan, P.S.- Rosera, District- Samastipur.
 2. Krishna Chandra Jha Son of Late Yogendra Jha, Resident of Village and P.O.- Kariyan, P.S.- Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Darbhanga Commissionery, Darbhanga.
2. The District Magistrate, Samastipur, District- Samastipur.
3. The District Land Acquisition Officer, Samastipur, District- Samastipur.
4. The Dy. Collector, Land Reforms, Samastipur, District- Samastipur.
5. The Sub Divisional Officer, Rosera, District- Samastipur.
6. The Circle Officer, Shivajee Nagar, District- Samastipur.
7. The Anchal Amin, Anchal Shivajee Nagar, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Suresh Kumar Ishwar, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha (SC 19)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

11 15-03-2024 Heard learned counsel for the petitioner and the State.

2. The present petition has been preferred for the following reliefs:

“(i) for issuance of an appropriate order, direction, writ in the nature of certiorari for quashing the acquisition of order for the petitioner and by the Respondent. authorities no.731 vide letter



*dated 02.06.2022 as contained in Annexure-
g to this application where under and
whereby the respondent authorities have
ordered for acquisition of the petitioners
land. And they have started construction by
force under the Shyama Prasad Mukherjee
Rurban Mission Scheme under Agri Mart and
Skill Development Centre on the petitioners
land vide Khata no.2855, Khesra no.7404 an
area of 107 decimal, Khata no.2855, khesra
no.7403, area. 13 decimals total 120 on
illegal and baseless grounds that the
petitioners are in possession of the aforesaid
land from the date of purchase of the land
from Sita Ram Thakur by Registered Kewala
dated 14.12.1977;*

*(ii) for appropriate issuance writ,
of an order, direction in the nature of
Certiorari for quashing the impugned Survey
Khatian dated 26.04.2022 prepared by the
respondents as contained in Annexure-8 to
this application by which the respondents
have prepared/ issue the Revisional Survey
Khatian land as of the petitioner
Gairmajarua Aam (uncultivated land)
bearing Mouja Kariyan, Thana no.43, Khata
no.73B, Kheara no.3426;*

*(iii) for issuance of an appropriate
writ, order. direction in the nature of
Mandamus for commanding and directing*



the respondents authorities to give the actual compensation of the petitioner land been acquired which and has started construction over the petitioners' land by force without giving any compensation the to petitioners. The petitioner is fully entitled under the law of his land which has been acquired and started construction building over the petitioners and as such the respondents be directed to give the proper compensation of the aforesaid Land to the petitioners without any further delay;

(iv) for appropriate issuance writ, of an order, direction in the nature of Mandamus for commanding and directing the Respondents to vacate/free from acquisition of the petitioners land which is not under the acquisition/ construction of the building for the aforesaid scheme vide Khata no.8555, khata no.7414 area 80 decimals and as such the respondent authorities be restrained from any type of disturbance over the petitioners land which not acquired under the aforesaid scheme;

(v) for appropriate direction in issuance writ, the of an order, nature of mandamus for commanding and directing the Respondents to allow/continue the petitioners Kewala Khatiyan Jamabandi Mutation and possession of the aforesaid



land as earlier as petitioner ancestor were in possession over the land from the date of Kewala of aforesaid land from 14.12.1977;

(vi) for issuance of an appropriate writ, order, direction in the nature of Mandamus for commanding and directing the respondents to allow the petitioners documents kewala survey Khatiyani Jamabandi Mutation rent receipt in the name of the petitioner ancestor and petitioners. And be pleased to continued the same as the petitioners are in possession of the aforesaid land from 14.12.1977 more than 48 years and before the petitioners Vendor was in possession in the aforesaid land;

(vii) for issuance of an appropriate writ, of an order, direction in the nature of Mandamus for commanding and directing the respondents to issue fresh Khatiyani in the same of petitioner as earlier on the petitioner basis of documents the and possession Kewala Jamabandi Mutation, rent receipt possession certificate etc.”

3. The case of the petitioners is/are that one Sitaram Thakur, an ex-military man was settled with a land (Khata No. 738, Khesra No. 3426, area 2 acres) vide settlement order dated 13.04.1967 on the order of the Additional Collector, Darbhanga by the S.D.O., D.C.L.R., Darbhanga.



4. He submits that subsequently, Sitaram Thakur sold the aforesaid land on 14.12.1977 to the petitioners who are continuing in its peaceful physical possession. The rent receipts are also part of the record.

5. However, now the respondent-authorities vide letter no. 731 dated 02.06.2022 are threatening the peaceful physical possession of the land of the petitioners and in continuation of that, the Circle Officer, Shivajee Nagar has asked the Executive Engineer, Local Area Engineering Organisation, Work Division I, Samastipur to take appropriate steps for the land in question which is/are recorded as 'Anaabad Sarv Sadharan'.

6. He submits that since 1967 when the land was settled to the Sitaram Thakur and subsequently, sold to the petitioners in 1977, the peaceful physical possession is being disturbed forcing them to move before this Court.

7. A counter affidavit on behalf of the respondent-authorities is on record in which paragraphs 5 and 6 read as follows:

“That, in reply of the Para No-02 (i to ix) of the writ petition the petitioner respondent humbly submitted that the alleged sale deed dated- 14/12/1977 allegedly executed by one Sitaram Thakur is void, illegal and whereby no title and



possession had been acquired by petitioner or their predecessors is interest on following grounds :-

(i) That, the landed property covered with the Kewala dated-14/12/1977 had been allotted to said Sitaram Thakur by the State of Bihar as retired Military man with this terms and conditions that said allottee would have no salable right of the allotted property.

(ii) That, said Sitaram Thakur was never became owner of the said allotted property rather he was occupancy tenant of said landed property of Khata No-738 Thus he had no right to execute sale deed with regards of the land allotted to him as Ex-Military Man by the State of Bihar.

(iii) That, said allottee Sitaram Thakur abandoned his allotted property and settled himself elsewhere and therefore said property became again in nature of public land.

(iv) That, process of cancellation of Jambandi No-44 has been started.

(v) That, the petitioner were not in possession the land in question with alleged sale deed dated 14/12/1977. The construction work in public interest upon the Khesra No- 7404, 7403 is its final stage.

6. That, the land in question was



and is public land and accordingly public work Is being done upon the same.”

8. Vide supplementary counter affidavit, the notification no. 1339 dated 24/28 May 1974 has also been brought on record by which it was made clear that a land settled is non-transferrable (Annexure-A series).

9. In paragraphs 10 and 11 of the supplementary counter affidavit, the respondents have further narrated as follows:

“10. That so far averments with regard to Jamabandi and rent receipts made in Para-15 and 16 and Annexure-4 and 5 are concerned. It is submitted that these documents are revenue records and it is settled proposition of law that the revenue records neither creates nor extinguish title to the property nor has any presumptive value on title. However, the Annexure-4 & 5 admittedly of the year 2022 only i.e. of 18.02.2022 which is only 8 months before the date of filing of this writ. In this regard a citation (1997) 7 SCC 137 may be looked into.

11. That it is also an admitted fact that the revision survey of Khatiyon with regard to the land in question has been prepared in the name of State of Bihar as



Gairmazarua Aam and Anabad Sarv Sadharan Land which has not been challenged in any competent court as yet. In this regard it is submitted that correctness of finally published Khatiyan can be challenged by filing a suit or application before competent court or authorities for its correction which has not been done as yet and thus in a writ jurisdiction Khatiyan cannot be corrected. In this regard the judgment cited in (1993)2 PLJR 942 may be looked into.”

10. The photographs attached to the supplementary counter affidavit clearly show that contrary to the claim of the petitioners, the entire structure has now come up on the said land. The counter affidavit/supplementary counter affidavit of the State clearly shows that it is a government land, in view of the notification, the concerned person, Sitaram Thakur could never have transferred it to the petitioners. It is recorded as ‘Anaabad Bihar Sarkar’ on which construction has already been done, no rebuttal to paragraphs 5 and 6 of the counter affidavit has been made by the petitioner.

11. In that view of the matter, this Court does not deem it fit and proper to entertain the writ petition which is accordingly dismissed with a cost of Rs. 2,000/- deposited with



the Patna High Court Legal Services Committee within a period
of four weeks from today.

(Rajiv Roy, J)

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