

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4405 of 2024

Rajesh Upadhyay @ Rajesh Kumar Upadhyay Son of Late Bhukhal Upadhyay Resident of Mohalla-Gopeshwar Nagar, Chapra, P.S.-Bhagwan Bazar, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary, Building Construction Department, Govt. of Bihar, Patna.
2. The Engineer-in-Chief, Building Construction Department, Govt. of Bihar, Patna.
3. The Chief Engineer, (B.C), PWD, Building Construction Department, Chapra Division, Chapra.
4. The Superintending Engineer, Building Construction Department, Chapra Division, Chapra.
5. The Executive Engineer (B.C), Work Circle, Chapra Division, Chapra.
6. The District Magistrate, Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shatrughna Pandey, Advocate
For the Respondent/s : Mr. Ajay, Government Advocate 5

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 25-06-2024 Heard Mr. Shatrughna Pandey, learned counsel for
the petitioner and Mr. Ajay, learned G.A.-5.

2. The present petition has been filed:

*(i) for issuance of direction to the
respondent authorities to restore possession
of the petitioner over the land which he had
purchased in a auction sale dated
17.12.2002 held by the Sub Judge VII,*



Chapra in Execution Case No. 2/2001, but the petitioner has been dispossessed by the respondents authorities without their being any order passed by any Court.

3. It is the case of the petitioner that one Bhukhal Upadhyay, contractor had constructed the residence of the employees of the Primary Health Centre but the bill was not paid by the contractors. He preferred Arbitration Case No. 21/1992 against the State and got an Award of Rs. 3,15,714/-.

4. Later, his son (the petitioner herein) preferred Execution Case No. 02/2001 in which the Government buildings were auctioned vide an order dated 17.12.2002 and accordingly, the petitioner deposited an amount of Rs. 17,04,161/- for delivery of the possession of the building.

5. The State of Bihar thereafter preferred Miscellaneous Case No. 04 of 2006 challenging the order dated 17.12.2002 which was disposed of by the learned Sub Judge VII, Saran on 14.01.2016 (State of Bihar through the District Magistrate, Saran & Ors vs Fuleni Devi & Ors). (Annexure P/1 of the petition).

6. The relevant portion of the said order is as follows:

In the result, the miscellaneous case filed on behalf of the petitioner to set



aside the auction sale dt.17.12.2002 is hereby allowed and the auction sale dt. 17.12.2002 is et aside. The petitioner in his miscellaneous case no. 4/06 has stated that the Allotment to deposit the price of auction sale of rupees seventeen lac four thousand one hundred sixty one only, has come from the Government. Hence, the petitioner is directed to refund the aforesaid amount to the Q.P.

7. The petitioner challenged the said order in Miscellaneous Appeal No. 354 of 2016 which came to be dismissed on 07.02.2023 by a co-ordinate Bench of this Court (Annexure-P/2 to the petition).

8. Learned counsel for the petitioner submits that so far as the possession of building is concerned, after the order of the Patna High Court, the same stands settled and he do not have any objection. However, so far as the payment of Rs. 17,04,161 lakh is concerned, now that the building has been taken away from him, he is entitled to the same as per the direction of the learned Sub-Judge VII, Saran in Miscellaneous Case No. Miscellaneous Case No. 04 of 2006.

9. Mr. Ajay, learned GA-5 submits that his sister had earlier objected to the payment as would reflect from the fact that she is one of the respondent in the writ petition.



10. Be that as it may, the petitioner/heir of Bhukhal Upadhyay deposited a cost of Rs. 17,04,161 after the auction took place on 17.12.2002 in Execution Case No. 2/2001 and now that the order of learned Sub-Judge VII, Saran has come and stamped by the Patna High Court, the petitioner/heirs of Bhukhal Upadhyay are entitled to the amount.

11. Mr. Ajay, learned GA-5 submits that though the building in question relates to the Building Construction Department, the District Magistrate, Saran is the custodian of the buildings within his district.

12. In that background, the writ petition stands disposed of with direction to the respondent no. 6, the District Magistrate, Saran at Chapra to take up the matter relating to the petitioner and after perusing all the documents including the certificates provided by him/heirs, take a decision within three months and thereafter make payment in next three months, if admissible.

13. Learned GA-5 submits that they shall be given liberty to prefer appropriate suit for the recovery of the amount, if the payment is made inasmuch as the document on record/writ petition (letter no. 884 dated 19.07.2023 issued by the Executive Engineer, Building Division, Chapra {Annexure-P/3}) shows



that he had let out the said building and was realizing rent.

14. The writ petition stands disposed of with aforesaid observations/liberty.

(Rajiv Roy, J)

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