

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17775 of 2014

1. Ram Autar Mahto
2. Mohan Mahto
3. Radhey Pd. Mahto
4. Sheo Kumar Mahto Sons of Late Baleshwar Mahto All resident of Village - Parmeshra, P.S. and Anchal Lakhnaur, Sub Division Jhanjharpur, District - Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary Animal and Fisheries Resources Department, Govt. of Bihar, Patna.
3. Director Fisheries, Govt. of Bihar, Patna.
4. District Magistrate-Cum-Collector, District Madhubani.
5. S.D.O. Jhanjharpur District - Madhubani.
6. Anchal Adhikari Lakhnaur, Sub Division - Jhanjharpur, District - Madhubani.
7. District Fisheries Officer, District Madhubani.
8. Kapileshwar Mukhiya, Secretary Fisheries man Co-operative Society Anchal Lakhnaur, Distt. Madhubani.
9. Kameshwar Mukhiya Son of Dukhi Mukhiya of Village - Lakhnaur, P.S. - Lakhnaur, District - Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Sunil Kr. Mandal, SC 23

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

11 08-04-2024 Heard Mr. Arun Kumar, learned counsel for the

petitioner and Mr. Sunil Kumar Mandal, learned Standing

Counsel No. 3.

2. The present writ petition has been preferred for:

*issuance of writ of Mandamus or any
other writ or Writs, direction or directions/*



commanding upon the respondents not to interfere in the peaceful possession of Pokhar situated in the village- Lakhnaur tole Chharapatti. P.S. Lekhnaur. Sub Division Jhanjharpur, District Madhubani, which stand in R.S.P. No. 5254 having an area of 1 bigha 5 katha 18 dhure. in which the petitioner has given Jeera (fish) in the said Pokhar but the respondents i.e. Fishersmen co-operative society is wrongly claiming the same. I said to have taken in settlement from Anchal Adhikari Lakhaur, P.S. Lakhnaur, District- Madhubani.

3. On 16.02.2024, the following order was passed:

“Though learned counsel for the petitioner and the State are present, the respondents are unrepresented.

From the record, it is not clear whether against the Title suit which was allowed in favour of the petitioner, any appeal has been preferred by the others or not.

As a last chance, list after four weeks.

Even then, if there is no representation on behalf of the private respondents, an appropriate order shall be passed.”

4. A supplementary counter affidavit has been filed on behalf of the respondent nos. 4 to 6 and though the respondents have tried to make out a case that the competent Civil Court has



not passed the order and as such, the same is bad in law. Regarding filing of any appeal in paragraph nos. 11 & 12 it has been stated as follows:

“11. That so far as filing of appeal against the order dated 13.03.2011 passed in T.S. No. 313/2008 is concerned.

It is, humbly submitted that said order was passed ex-parte and no notice was ever issued to the state or authorities concerned and the respondent no.- 6 (It is pertinent to mention here that It may be seen that in the said Title Suit bearing T.S. No. 313/2008 the Petitioner has made party to Anabad Bihar Sarkar through Anchal Adhikari Madhepur, within District Madhubani but not made party to Anchal Adhikari Lakhnaur, Sub Division. Jhanjharpur, District - Madhubani) as well as others governments were not made parties to the above said T. S. no. 313/2008 by the petitioners of the this writ petition.

Hence order passed dated 13.03.2011 is not binding as against the state authorities and the same is bad for the non- joinder of necessary parties.

12. That therefore, considering the all facts and entire surrounding circumstance authorities concerned did not preferred appeal against the vide order dated 13.03.2011, passed ex-parte and without any notice in T. S. no.- 313/2008,



U/S-106 BT Act and no any above said order dated 13.03.2011 has not been passed by the competent Civil Court, having appeal is either pending or disposed of, filed by the State authorities, against the said order in any Court.”

5. The order was passed in the year, 2011 and the writ petition was filed in the year, 2014 after service of two copies to the State. Despite knowledge of the order against them for last one decade, the State cannot take the *alibi* that they have no knowledge about it.

6. In that background, this Court has no option but to allow the writ petition with a direction to the respondents not to interfere with peaceful possession of the land in question as the State has chosen to look the other way by not filing any appeal against the order.

7. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

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