

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10136 of 2020

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Upendra Narayan Singh Son of Ambika Singh Resident of Village-Iniyar
Ward no.12, Kali Mandir, Post Office-Danauli Phulwariya, Police Station-
Begusarai Muffasil and District-Begusarai PIN-Code-851211, (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The State of Bihar through Collector/District Magistrate, Begusarai
3. The Superintendent of Police, Begusarai.
4. The Land Acquisition Officer, Collectorate, Begusarai.
5. The Deputy Development Commissioner, Begusarai.
6. The Block Development Officer, Begusarai.
7. The Sub Divisional Officer, Begusarai.
8. The Circle Officer, Begusarai Block
9. The Chief Engineer, Rural Engineering, Viseshwaraiya Bhawan, Patna, Bihar.
10. The Assistant Engineer, Rural Engineering Works, Begusarai
11. The Junior Engineer, Rural Engineering Works, Begusarai
12. The Secretary Public Works Department, Govt. of Bihar, Patna.
13. The Mukhiya of Gram Panchayat Bhairwar Post Office-Danauli Phulwariya, Police Station-Begusarai Muffasil and District-Begusarai, PIN-Code-851211, (Bihar).
14. The Panchayat Secretary, Village-Gram Panchayat Bhairwar, Post Office-Danauli Phulwariya, Police Station-Begusarai Muffasil and District-Begusarai, PIN Code-851211, (Bihar).
15. Manjesh Kumar @ Meghu Kumar Son of Tripit Singh, Ward Member (Ward no. 12). Resident of Village-Iniyar, P.O.-Danauli Phulwariya, P.S.-Begusarai Muffasil and District-Begusarai, PIN Code-851211, (Bihar).
16. Ajay Kumar Son of Late Harihar Prasad Singh, Ward Secretary (Ward no.12) Resident of Village-Iniyar, P.O.-Danauli Phulwariya, P.S.-Begusarai Muffasil and District-Begusarai, PIN Code-851211, (Bihar).
17. Meenu devi Wife of Sarveshwar Prasad Singh Member Ward Krianvayan Awam Prabandhan Samiti (Ward no.12).
18. Rajeev Kumar Singh Son of Late Awadhesh Singh Punch Cum Member ward Krianvayan Awam Prabandhan Samiti (Ward no. 12).
19. Sarveshwar Prasad Singh S/o Late Ramchandra Singh, Resident of Ward No. 12, Kali Mandir, Village Iniyar, P.S. Lakho Mufassil, Distt. Begusarai, PIN 851211.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Smt. Namrata Mishra, Advocate Mr. Apurva Kumar, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, G.P.-14 Mr. Subodh Kr. Mishra, GP-14
For the Respondent No.-19		Mr. Suresh Pd. Singh no.1 Ms. Kumari Rashmi, Advocate
For the respondent no.13		Mr. Suresh Kumar, Advocate Mr. Arvind Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

23 07-05-2024 Heard Mrs. Namrata Mishra duly assisted by Apurva Kumar, learned counsel appearing on behalf of the petitioner, Mr. Dhurjati Kumar Prasad, representing the State, Mr. Suresh Pd. Singh for the respondent no.19 and Mr. Suresh Kumar for the respondent no.13.

2. Lots of water has flown down in the Ganges and now the time has come to consign the file.

3. The petitioner and respondent no.19 are agnates. By an agreement between father of respondent no.19, late Ram Chandra Singh and the petitioner herein (Upendra Narayan Singh), they agreed to the use of 12 feet common 'Rasta'.

4. It is the case of the petitioner that the same was to be used exclusively by the two families but without his consent, the respondents constructed PCC road which caused loss not only to the State exchequer, it has now become a common road being used by everyone.

5. Respondent no.19 is the son of late Ram Chandra



Singh (brother of the petitioner) with whom the petitioner entered into an agreement. He submits that neither he/his family members were made party respondents nor the agreement paper was brought on record by the petitioner earlier in the writ petition. Upon knowledge of filing of the writ petition, he himself filed Intervenor petition and got impleaded as respondent no.19. He submits that the petitioner has suppressed material facts and further did not impleaded him/his brother as party respondent and thus the writ petition is fit to be dismissed for non joinder of necessary party.

6. The stand of the respondent no.19 as averred in the petition read as follows:

4. that it is humbly submitted that the intervener has come learn that the writ petitioner i.e. uncle of the intervener has filed the aforesaid application, alleging therein the PCC road under CM "Saat Nichaya Yojana" has been constructed over Plots no.230 &231, which is his private Raiyati Land without his consent, as such he has sought clear possession of the land by



removing the Pucca construction of the road. However, purposely he has not made a party to instant case so that he could be able to suppress the material facts and get the order, misleading the Hon'ble court, and to the extent he has succeeded in his game. As the state respondents have failed to controvert his claim, however as per information the respondent Collector, Begusarai has also filed the affidavit and brought the aforesaid partition deed dated 25.1.1973 on records, but unfortunately could not satisfy the Hon'ble court with the actual state of affairs, as such the order dated 27.07.2022 has been passed;

5. that after the said order has been passed, the intervener came to know about filing the case by his uncle, and upon enquiry it is learnt that the writ petitioner has drawn an inference that



the said 12 feet land over which the alleged PCC Road has been constructed is an exclusive Raiyati private land of the petitioner, which is a white lie, as the petitioner has got only 6 Katha 9 Dhurs 6 Dhurki and 12 Furki, whereas he is in actual possession over 7 Katha 1 Dhurs and 13 Dhurki (12453.33 Sq.ft.) in the said plots, suffice is to say that more than his entitlement he is possession the land, as such neither he is entitled to raise the dispute order the alleged road nor he may be granted any relief as prayed, for better appreciation the deed of partition dated 25.1.1973 and the Nazari Map of the Road is placed on records to clarify the issue under dispute;

6. that from Para No.7 of the recital of the aforesaid partition deed, it will transpire that for the party 1" part i.e.



father of the intervener has been given the 12 feet wide Rasta in the alleged plots no.230 & 231, from public road to the house of the intervener situated in the said plots 230 and 231, and since the writ petitioner has got his share besides the Public road whereas the father of the intervener has got his share behind the said plots as such father of the intervener has got 10 Katha 3 Dhurs | Dhurki and 8 Furki share out of which the said 12 feet wide Rasta has been given, therefore the said 12 feet wide land for Rasta is existing over the land given in the share of the intervener, from which the writ petitioner has no concern, moreover as per schedule fixed in the said partition deed all the concerned shareholders are retaining their right title and possession peacefully since partition i.e. 48 years;



7. that even the writ petitioner has constructed his house over his share in the same plots no. 230 & 231, and since he has covered his entire share even more than his entitlement as such he has not even any window in the side of said road, and from the measurement report, it would transpire that he is in possession over 7 Katha | Dhurs and 13 Dhurki (12453.33 Sq.ft.) in the said plots, which is more than his share, even then has mislead the Hon'ble court by drawing inference that the road if constructed over his exclusive private land without his consent, which is an apparent case of playing fraud with the juridical proceeding, though every litigant must have come before the Hon'ble courts with clean hands, which is lacking in this instant case, and on this ground alone the present writ application



deserves to be dismissed with costs, apart from initiating an appropriate proceeding u/s 340 of the Cr.pc.;

8. that it is further stated that since the said 12 feet Rasta was connecting to the house of intervener as well as other co-sharers, as such all of the persons having right in the said plots has already given their written consent on Rs. 1000/- non judicial Stamp so that the PCC road may be constructed, thereafter only the General Meeting (Aam Sabha) of the gram panchayat has resolved in its meeting dated 15.09.2019, moreover since the writ petitioner has no share in the said 12 feet wide land, as such his consent was not required at all, as the consent is already given by the concerned shareholders of the plots, thus if the PCC road is constructed over the land in question, the writ petitioner has got



no locus to embark over the same as in any case he is not affected, moreover under malicious intention this writ application is being filed by the petitioner to get him enriched by getting the compensation without his entitlement for better appreciation the Minuets of Aam Sabha dated 15.09.12019 is brought on records.

7. On 11.3.2024, this Court passed an order and paragraph 9 read as follows:

9. In that background, the respondent nos. 2 and 9, the Collector, Begusarai and the Chief Engineer, Rural Works Department, Bihar, Patna respectively shall file separate affidavit on:

(i) whether the land on which the investment has been made exclusively belongs to the petitioner and his



agnates/respondents or it is being used by the local villagers and the road moves ahead to the houses of local villagers too;

(ii) if the land is being used exclusively by the families of the petitioner and the respondent no.9, how the Saat Nischay Yojana was extended on the private land and money invested;

(iii) what is the amount that has been invested under the Saat Nischay Yojana on the said private land;

(iv) copy of the Saat Nischay Yojana be also annexed to show exactly what is the scheme and whether it includes of investment of Government money on a private land too.

8. Subsequently, a counter affidavit came to be filed duly signed by the Collector, Begusarai and paragraph-3 read as



follows:

3. That in course of inquiry, petitioner appeared before the committee. The Block Development Officer Begusarai submitted records relating to construction of this PCC Road and joint spot inquiry report. The inquiry team perused the records and heard the petitioner and submitted his report point wise which are as follows:-

(i) PCC Road in question has not been constructed exclusive over the land of the petitioner. Only three hundred ft. long PCC Road has been constructed against proposed 570 ft. long PCC Road and only 150 ft. long PCC Road has been constructed over petitioner's land and rest 150 ft. long road has been constructed over petitioner's co-sharer land. From the perusal of Para No.7 of registered partition deed dated 25.1. 1973 between



petitioner and his co-sharer it came to known that there is a provision for Road of 12 ft. wide. It is also mentioned in this partition deed that the land in front of which road will pass, the same shall be deducted from the scheduled land of the co-sharer. This road is being used by the petitioner and house of nine other family members. This road connects main road which is used by the other villagers also;

(ii) as per the report of the Joint Inquiry Team, this road is being used by the other villagers also;

(iii) total estimated cost of this project was Rs. 11,58,500/- out of which Rs. 6,90,000/- has been spent over this project;

(iv) this PCC Road has been constructed under 'Mukhiya Mantri Gramin Gali-Nali Pakkikaran



Nischay Yojna'.

9. The petitioner has filed reply to the said counter affidavit and has disputed the statement made by the District Magistrate, Begusarai. It is his stand that before the 'Rasta' was converted into PCC Road, no consent was taken from him.

10. The counter affidavit has been filed by the Collector, Begusarai himself and the Court is satisfied with the averment made therein.

11. Beside the aforesaid facts, the Court has also taken note of the fact that the petitioner deliberately chose not to implead the heirs of his late brother, Ram Chandra Singh as party respondent and one of the son himself appeared by filing Intervenor Petition. Further, initially, nowhere in the writ petition, it was incorporated that under family arrangement, 12 feet 'Rasta' was left common for the use of two families. Rather, he made out a case that pursuant to the partition, he got exclusive rights over the land.

12. In the aforesaid background, learned counsel for the respondent no.19 rightly submitted that the writ petition is fit to be dismissed for not impleading the necessary parties as party respondents beside suppression of material facts.



13. Taking into account all the aforesaid facts as also the categorical statement of the District Magistrate, Begusarai not comprehensively replied by the petitioner coupled with the fact that the family members of late Ram Chandra Singh were not made party respondents and the agreement/partition deed between them was not brought on record thus clearly suppressing the facts to his advantage, no relief can be extended to him.

14. CWJC No. 10136 of 2020 stands dismissed.

(Rajiv Roy, J)

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