

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17546 of 2022

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Mohammad Ayub S/o Late Mohammad Hanif, R/o Sadar Chowk, Ward no. 34, P.O. - Dehri, P.S.- Dehri Town, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The Deputy Collector, Land Reforms, Sasaram.
3. The District Magistrate, Rohtas.
4. The Circle Officer, Nokha, Rohtas.
5. The District Assistant Registrar, Rohtas, Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Namrata Mishra, Advocate.
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 28-11-2024 1. Heard learned counsel for the petitioner and learned
AC to SC-11.

2. The learned counsel for the petitioner submits that land pertaining to Khata No.1558/766, Plot No.5187/3553, Area .82 decimal at Mauza-Nokha, Thana No.441, District-Rohtas is raiyati land of the petitioner. It is submitted that the land was purchased by the mother of the petitioner, namely, Fahmida Khatoon wife of Mohammad Hanif vide registered sale deed dated 03.02.1975 from one Md. Salahuddin Khan, after purchase, the land was mutated in the name of the mother of the petitioner and rent receipts were issued.

3. It is submitted that later the land in question was recorded as Sarva Sadharan in R.S. Khatiyani and the authorities



tried to dispossess the land owner, hence the mother of the petitioner filed Title Suit No.100/1997 in the Court of learned Sub Judge-I, Sasaram for declaration of her right, title, interest and possession over the land in question. In the Title Suit No.100/1997, the State of Bihar through Collector, Rohtas was impleaded as defendant, notices were issued on the defendant but the defendant despite receiving notice chose not to appear and contest, hence the suit was decided ex-parte vide Judgment dated 04.02.2002 (Annexure1) and Decree dated 13.12.2002 (Annexure-1/1) in favour of the mother of the petitioner.

4. The learned counsel submits that from perusal of para-3 of the judgment dated 04.02.2002 in Title Suit No.100/1997, it would manifest that the same records that the defendant despite receiving notice did not appear, hence the suit is being fixed for ex-parte hearing.

5. It is further submitted that after the judgment and decree in Title Suit No.100/1997 was passed, the mother of the petitioner thereafter filed Case No.4/2007-08 (Nokha) before the D.C.L.R., Sasaram for rent fixation, the D.C.L.R. passed an order dated 20.08.2012 (Annexure-2) and fixed the rent of the land, accordingly, correction slip dated 10.10.2013 (Annexure-3) was issued in favour of Fahmida Khatoon and rent thereafter



is being paid, as would manifest from Annexure-4 to the writ application.

6. The learned counsel submits that from the facts stated hereinabove, it becomes clear that the authorities in the year 2007 itself became aware that a judgment and a decree in favour of the mother of the petitioner has been passed in T.S. No.100/1997 but still the authorities did not choose to challenge the said judgment and decree.

7. It is next submitted that co-villagers Ashok Kumar Singh, Dharmendra Kumar along with 14 others have filed Title Suit No.1076/2018 in the Court of learned 2nd Munsif-Sasaram for declaring their easementary right over the land in question. In T.S. No.1076/2018, the petitioner and the State of Bihar have been impleaded as defendants no.1 and 2.

8. It is next submitted that petitioner had sold the land in part to different purchaser as detailed in para-9 of the writ application vide registered sale deed and the names of the purchasers have been mutated over the land sold by the petitioner, as would manifest from Annexure-5 series. The learned counsel submits that though it has not been pleaded in the writ application but then the lands were sold to different purchasers much after judgment and decree in Title Suit



No.100/1997.

9. It is further submitted that the petitioner was in need of money for medical treatment, as such, he sold some land and when the sale deed was not being registered, petitioner went to the Office of the Sub-Registrar, on inquiry, it was disclosed that registration could not be done as the land has been included under Jal-Jiwan Hariyali Scheme under the order of the D.M., Rohtas. It is submitted that despite best effort of the petitioner to obtain the copy of the order passed by the D.M. including the land of the petitioner under Jal-Jiwan Hariyali Scheme from the office of the Sub-Registrar failed.

10. It is submitted that petitioner also came to know from the office of the Sub-Registrar that the Circle Officer after 20 years has filed T.A. No.3/2022 in the Court of learned D.J., Rohtas against the judgment and decree passed in T.S. No.100/1997. It is submitted that T.S. No.1076/2018 and T.A. No.3/2022 are pending adjudication.

11. The learned counsel further submits that the authorities realizing their difficulty in pursuing T.A. No.3/2022, withdrew the same, and thereafter, filed Misc. Case No.8/2023 in T.S. No.100/1997.

12. It is further submitted that what is not in dispute



rather stands admitted is that the land in dispute was purchased by the mother of the petitioner in the year 1975, the land was mutated, rent receipts were issued but later the land was recorded as Sarva Sadharan in R.S. Khatiyani, leading to filing of T.S. No.100/1997, the State despite receiving notice in the suit did not appear to contest (as would manifest from para-3 of the judgment dated 04.02.2002 in T.S. No.100/1997) and the suit was decided ex-parte in favour of the mother of the petitioner, based on which, the Rent Fixation Case was filed before the D.C.L.R. and the same was allowed, thereafter petitioner sold some land to different purchasers and the sale deed was registered but all of a sudden the District Magistrate, Rohtas included the land of the petitioner under Jal-Jiwan Hariyali Scheme, without issuing any show-cause to the petitioner seeking his explanation, as such, the decision to include the land of the petitioner under the aforesaid scheme by the D.M., Rohtas was taken behind the back of the petitioner, as such, such action of the D.M. cannot be sustained.

13. It is next submitted that in absence of any stay order against the judgment in T.S. No.100/1997, the Collector could not have included the land of the petitioner under the aforesaid scheme, more so, the authorities in the year 2007 itself



became aware of the judgment and decree in T.S. No.100/1997, as recorded, hereinabove, which amply demonstrates that the Collector has scant regards for the orders of the Civil Court.

14. The learned counsel further submits that on coming to know that his lands have been included under Jal Jiwan Hariyali Scheme, he represented before the Collector vide his representation dated 23.03.2021 (Annexure-8) but the Collector sat over his representation, as such, the representation till date is pending consideration of the Collector.

15. The learned counsel appearing on behalf of the State submits that a counter affidavit on behalf of the respondents no.2 to 5 have been filed, wherein it is submitted that T.A. No.3/2022 filed in the Court of learned D.J., Rohtas has been withdrawn and the C.O., Nokha has filed Misc. Case No.8/2023 against the judgment and decree in T.S. No.100/1997, as such, the petitioner cannot claim his title over the land nor he is in possession of the land and Jal Jiwan Hariyali Scheme is going to be implemented soon on the land. Further, in the meeting dated 24.11.2022, the matter was reviewed and a conscious decision was taken that restrain order over the land shall not be removed.

16. The learned counsel appearing on behalf of the



petitioner submits that the counter affidavit has not denied any factual aspect as pleaded in the writ application and recorded hereinabove, rather the basic contention of the State is that since Misc. Case No.8/2023 has been filed, as such, the petitioner cannot claim his right and title over the land. It is next submitted that at para-16 of the writ application, it has been specifically pleaded that the scheme under Jal Jiwai Hariyali or any other government scheme has not commenced on the land of the petitioner, the said pleading of the petitioner is replied vide para-32 of the counter affidavit, which was filed on 13.03.2023, that the scheme is going to be implemented soon, which amply demonstrates that the scheme has not commenced and the reason is obvious that the land is in possession of the petitioner.

17. It is next submitted that mere filing of Misc. Case No.8/2023 and that too after 21 years of the judgment and decree passed in T.S. No.100/1997, does not in any manner water-down the effect of judgment and decree in T.S. No.100/1997. It is also submitted that the land was purchased by his mother in the year 1975, thereafter mutation was done and rent receipts were issued but in the interregnum his mother had to contest the T.S. No.100/1997, thereafter again rent receipts were issued, as such, the jamabandi of the land is continuing for



more than 49 years and the same till date has not been cancelled nor can be cancelled in a summary proceeding, as held by this Court in C.W.J.C. No.4523 of 2020 (Anju Kumari Vs. the State of Bihar) decided on 31.07.2023, wherein this Court had specifically held that long standing jamabandi cannot be cancelled in a summary proceeding and if the State intends to get the jamabandi cancelled, in that event, the State will have to move before a Court of competent civil jurisdiction.

18. The learned counsel thus submits that in this background, the present writ application was filed seeking a direction upon the respondent no.3, the District Magistrate, Rohtas to immediately release the raiyati land of the petitioner situated at Mauza-Nokha, Thana No. 441, Khata No.1558/766, Plot No.5187/3553, measuring an Area .82 decimal taken over by him illegally to execute the Jal Jiwan Hariyali Scheme.

19. The Court is in complete concurrence with the submissions made by the learned counsel appearing on behalf of the petitioner that the State authorities merely because they have filed Misc. Case No.8/2023 in T.S No. 100/1997 cannot claim the land of the petitioner for the aforesaid scheme without getting the jamabandi of the land cancelled, in accordance with law. Further, the action of the District Magistrate, Rohtas in



including the land of the petitioner for the aforesaid purpose by a decision, taken behind back of the petitioner, cannot be sustained. Further, from the pleadings made in the counter affidavit, it is clear that the petitioner was not given any opportunity of hearing nor any show-cause was issued by the District Magistrate, Rohtas before including his land for the aforesaid project, which amply demonstrates that the District Magistrate, Rohtas has scant regards for the orders of the Civil Court though it was ex-parte.

20. After hearing the learned counsel for the parties, the Court has no option but to allow the writ application with a direction to the Collector, Rohtas to forthwith release the land of the petitioner from the purview of Jal Jiwan Hariyali Scheme within a period of 15 days from the date of receipt/production of a copy of this order. However, this order in no manner will preclude the Collector from initiating action against the petitioner, in accordance with law.

(Satyavrat Verma, J)

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