

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16070 of 2021

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Jag Bihari Chaudhary, Son of Late Ram Lal Chaudhary, Resident of Village-
Mishrawaliya, P.O.-Karsar, Police Station-Nawanagar, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. The District Magistrate, Buxar.
4. The Block Development Officer, Nawanagar, Buxar.
5. The Circle Officer, Nawanagar, Buxar.
6. Sunil Kumar Mishra, Son of Sri Ramashish Mishra, resident of Village-
Mishrawaliya, P.O.-Karsar, P.S.-Nawanagar, District-Buxar, PIN CODE-
802129.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shree Kant Pandey, Advocate
For the Respondent/s : Mr. Akhileshwar Singh, AC to GA2

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 01-08-2025

Heard the parties.

2. In the instant petition, petitioner has prayed for
the following relief(s):-

*For issuance of a writ in
the nature of Mandamus directing and
commanding the Respondents authority
i.e. Respondent No. 3 to construct the
P.C.C Road which is constructed by
M.L.C fund, removed by Circle Officer,
Nawanagar with collusion of Respondent
No. 6 as being his raiyati land, which is
wrong, that road is not, in raiyati land of*



Respondent No. 6, Respondent No. 6 wanted to take compensation under Land Acquisition Act, treating it as raiyati land and when compensation was not paid, then removed the P.C.C Road, which is Rasta of Public bearing Area 4 feet wide into 20 feet length in this regard, representation filed before District Magistrate, Buxar Vide Annexure 5, but no heed was paid by Respondent No. 3 and take action against Respondent No. 5 and 6 who play fraud before Hon'ble High Court and not came with clean hand in C.W.J.C No. 1094 of 2015 which is disposed of Vide order dated 10/4/2015.

3. Learned counsel for the petitioner submits that the land situated in Mauza – Bhelwariya, Block Nawanagar, District Buxar bearing khata no. 41, plot no. 429 on which the alleged PCC road, which is 4 feet wide and 20 feet in length, was constructed is not the land of the respondent no. 6. He further submits that respondent no. 6 has approached the Hon'ble High Court vide C.W.J.C. No. 1094 of 2015 stating therein that public road has been constructed over his raiyat land situated in Mauza – Bhelwariya, Block Nawanagar District – Buxar bearing Khata No. 49, C.S. Plot No. 428, 429. It was stated in construction of the said road neither consent was taken nor compensation was paid under the Land Acquisition Act. Learned counsel submits that the said



C.W.J.C. No. 1094 of 2015 has been disposed of with direction to the District Magistrate, Buxar, after getting an enquiry, either to arrive at a settlement with the petitioner or to take recourse to the provision of Land Acquisition Act or to restore the land to its original position.

4. Learned counsel for the State submits through paragraph 12 of the counter affidavit that Anchal Amin submitted a report that said road has been constructed on 33'X2.6' (82.5 Square Feet) of the Plot No. 429 which is the raiyati land of the respondent-Sunil Kumar Mishra, as contained in Annexure C of the counter affidavit. He further submits that the land in question is a public path. He further submits that counter affidavit clearly denotes that there is dispute of right and title over the land in question. Hence, the present writ is not maintainable.

5. In the light of submission made on behalf of both parties, it is clear that there is dispute between the parties over the land in question.

6. The Hon'ble Supreme Court in *catena* of judgments has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the



High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special and extra-ordinary should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme Court in the case of ***Sohan Lal Vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in (2015) SCC 423 are quite relevant.

7. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be



made and restoration of the property to Jagan Nath be ordered.”

8. In the case of ***Radhey Shyam (supra)***, Hon’ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

9. In the light of the discussion made above, the disputed aspect with respect to the title over the land cannot be decided in writ jurisdiction and the appropriate remedy, in the facts and circumstances of the case, is before the Civil Court.

10. Accordingly, the present writ petition is disposed of with liberty to the petitioner to approach before the



appropriate authority/forum.

11. So far as the grievance of the petitioner as raised before the District Magistrate, Buxar by way of representation (Annexue-5) which has not been decided as yet, petitioner is granted liberty to represent his grievance, as has been raised in the present writ petition, afresh before the District Magistrate, Buxar within a period of four weeks from the date of receipt of this order. If such representation is filed within the stipulated period, the competent authority will pass appropriate order after giving due opportunities of hearing to the parties concerned, without being prejudiced by the order passed by this Court, expeditiously within a reasonable period of time.

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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