

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11530 of 2013

- 1.1. Most. YashodaDevi W/o Late Dev Narain Paswan, Resident of Mohalla-Naya Gaon, P.O.-Gulzarbagh, P.S.-Alamganj, District-Patna-800007
- 1.2. Smt. Urmila Devi, D/o Late Dev Narain Paswan and W/o Sri Shashi Bhushan Paswan, Resident of Mohalla-Naya Gaon, P.O.-Gulzarbagh, P.S.-Alamganj, District-Patna-800007
- 1.3. Smt. Manju Devi, D/o Late Dev Narain Paswan and W/o Sri Ashok Paswan, Resident of Mohalla-Garbhuchak Jagdeo Path, P.O.-B.V. College, P.S.-Airport, District-Patna-14.
- 1.4. Smt. Anju Devi, D/o Late Dev Narain Prasad and W/o Sri Nagendra Paswan, Resident of Mohalla-Naya Gaon, P.O.-Gulzarbagh, P.S.-Alamganj, District-Patna-800007
- 1.5. Smt. Indu Devi, D/o Late Dev Narain Paswan and W/o Sri Bhim Paswan, resident of Mohalla-Garbhuchak Jagdeo Path, P.O.-B.V. College, P.S.-Airport, District-Patna-14.
- 1.6. Smt. Rekha Devi, D/o Late Dev Narain Paswan and W/o Ram Kishore Paswan, present address Naya Gaon, P.O. Gulzarbagh, P.S.-Alamganj, District-Patna-800007 and permanent address Jafrabhagwanpur, P.O.-Tiskhora, P.S.-Naubatpur Bihta, District-Patna-800 111

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Bihar Urban and Housing Development Department, Government Of Bihar, Patna
3. The Executive Engineer, Jila Shahri Vikas Abhikaran 4th Floor, Vikas Bhavan, Collectorate, Patna - 1
4. The District Magistrate, Patna
5. The Administrator, Patna Municipal Corporation, Patna
6. The Senior Superintendent Of Police, Patna
7. Sri Nand Kishore Yadav S/O Not Known, Mla, Patna City Resident Of Khajekala Ghat, P.S. Khajekala, District - Patna
8. The Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
9. The Superintendent, Nalanda Medical College Hospital, Agamkuan, Patna.
10. The District Land Acquisition Officer, Patna.
11. The Circle Officer, Patna Sadar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Lakmesh Marvind, Advocate
For the State	:	Mr. Kinkar Kumar, SC-9



For the PMC : Mr. Prasoon Sinha, Sr. Advocate
: Mr. Prabhat Kumar, Advocate
: Mr. Pushkar Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

14 04-09-2025 Heard Mr. Lakmesh Marvind, learned counsel for the petitioner and Mr. Kinkar Kumar, learned SC-9 as also Mr. Prasoon Sinha, learned Senior Counsel representing the Patna Municipal Corporation (henceforth for short 'the PMC').

2. The present petition has been preferred for the grant of following relief(s):

“(i) for issuance of appropriate writ(s), direction(s), order(s) commanding the respondents concerned to immediately remove the Sila-Patt/Hoarding, on which the name of Sri Nand Kishore Yadav, MLA, Patna City is written from the private land of the petitioner.

(ii) for directing the respondents concerned to not to construct the public park on the private land of the petitioner.

(iii) for further directing the respondent concerned to hand over the possession of the said land to the petitioner after vacating it from the material which has been deposited on it for construction of park.”



3. The matter relates to Plot No.739 (area 5 Katthas 2 dhur) in Circle No. 85, Ward No. 56, Mohalla-Nayagaon under Alamganj Police Station, Patna City in the district of Patna.

4. The claim in the writ petition is that the original petitioner, Dev Narain Paswan in the year 1944 got a 'Hukmnama' from late Lallu Prasad Singh and used to grow vegetables on it. The further contention is that after the coming into force of Bihar Land Reforms Act, 1950 and vesting of the zamindari with the State of Bihar, the claim is that the petitioner had peaceful possession of the plot no. 739.

5. However, it is to be noted that the petitioner chose to file Land Mutation Case no. 337/5 of 1997-98 (47 years later) before the Circle Officer, Patna for the mutation of the said plot no. 739. It got mutated in the year 2000 (Annexure-4 to the petition).

6. As per the writ petition, on 28.05.2013, a foundation stone was laid by the local MLA and the then Minister for Road Construction Department, Government of Bihar (respondent no.7) for the construction of a public park on the said land. The event was published in the local newspapers on 29.05.2013. This followed the representation before the Collector, Patna as also the Municipal Commissioner, Patna



Municipal Corporation, Patna on 10.06.2013 and immediately thereafter the writ petition.

7. The State has filed the counter affidavit on behalf of the respondent no.4, the District Magistrate, Patna according to which, the land in question (is plot no.1232) belongs to the Nalanda Medical College and Hospital, Patna (henceforth for short 'the NMCH') alongwith the other adjacent plots (para 12 of the counter affidavit) that was/were acquired decades ago. Lter, they also got the 'No Objection Certificate' of the Superintendent, 'the NMCH'.

8. The petitioner has filed its reply to the said counter affidavit and disputed the claim of the State respondents. In the aforesaid circumstance, the coordinate bench of this Court on 03.04.2023 directed the District Magistrate, Patna to enquire into the matter and demonstrate that the said land has been acquired for 'the NMCH'.

9. Subsequently, supplementary counter affidavit came to be filed on behalf of the respondent no.4, 10 and 11. As per the affidavit, the District Magistrate, Patna alongwith Officers made a spot inspection on 20.04.2023 and in paragraph no.7 of the said affidavit, it has been recorded that the park is situated in Municipal Survey Plot No. 1232 and beside it, there



is a road and east to it is the boundary wall of 'the NMCH'.

10. So far as the Municipal Plot no. 739 is concerned, the subsequent paragraph no.8 shows that upon measurement, it was found to be inside the boundary wall of 'the NMCH' and as such, the claim made by the petitioner is totally unjustified.

11. Another counter affidavit has come on behalf of the respondent no.9, the Superintendent, 'the NMCH' and paragraph no.5 shows that the land in question is under the possession of 'the NMCH' for last six decades, the pillars around the land has been constructed and already handed over to the Hospital Authorities. The further averment is that long thereafter, in the year 1997, the petitioner got the land mutated and is now agitating the matter.

12. It is to be noted that the documents on record shows that earlier there was correspondence for the land relating to the plot no. 739 and only after the enquiry that was conducted in the presence of the District Magistrate, Patna pursuant to the order passed by the coordinate Bench on 03.04.2023 that it came to light that the Park has been actually constructed on the plot no. 1232 while the plot no. 739 is inside the boundary wall of 'the NMCH'.

13. There are affidavits on behalf of the District



Magistrate, Patna as also the Superintendent, 'the NMCH' claiming that the land in question stands acquired six decades ago for 'the NMCH' and the park in question is located on plot no. 1232 while the plot no. 739 is inside the campus of 'the NMCH'; on the other hand, the petitioners/substituted heirs of Dev Narain Paswan claim that plot no. 739 is outside the road, under their possession till the year 2013 but later at the behest of the then Minister, it has been turned into a park.

14. In the considered opinion of this Court, such disputed question of facts cannot be adjudicated in a writ petition under article 226 of the Constitution of the India. There is nothing on record to show whether the original petitioner/heirs ever agitated the matter before the Sub-Divisional Magistrate and/or competent civil court.

15. The parties are free to take recourse to the remedy available under the law of the land by filing appropriate petition/suit before a competent civil court.

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

(Rajiv Roy, J)

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