

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.614 of 2022

In

Civil Writ Jurisdiction Case No.1592 of 2021

=====

Ram Awadhesh Yadav S/o Ram Babu Yadav, resident of Naya Tola, behind Kriti Petrol Pump, P.S.- Agamkuan, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through The Principal Secretary, Department of Home, Government of Bihar.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
3. The Director General of Police, Bihar At Patna.
4. The Senior Superintendent of Police, Patna.
5. The Station House Officer, Police Station, Agamkuan, Patna.
6. Dr Arshad Sharful Haque, S/o Dr Ghulam Sharful Haque, resident of Kumhrar House, Dargah, P.S.- Sultanganj, District- Patna.
7. Nawab Lal Yadav, S/o Ram Babu Yadav resident of Naya Tola, behind Kriti Petrol Pump, P.S.- Agamkuan, District- Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Basant Chaudhary, Adv. Mr. Rajendra Nath Singh, Adv.
For the Respondent No. 6	:	Mr. Hemendra Prasad Singh, Sr. Adv.
For the State	:	Ms. Nutan Sahai

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 31-01-2023

1. Heard Mr. Basant Chaudhary, the learned Senior Advocate for the appellant and Mr. Hemendra Prasad Singh, the learned Senior Advocate for the respondent No. 6. The State is represented by



Ms. Nutan Sahay, the learned counsel.

2 Curiously there is no appearance on behalf of respondent No. 7, who is the own brother of the appellant and who had appeared as party/respondent along with the appellant before the writ Court.

3. Respondent No. 6 had initially approached this Court *vide* C.W.J.C. No. 1592 of 2021, seeking a direction to the government authorities to protect his constitutional rights so that he could enjoy the property in question which was claimed to be his raiyati land, falling in Khata No. 275, Khesra No. 184 with an area of around 1 acre and 35 decimals under the jurisdiction of Kumhrar Police Station in Agamkuan. There was a further prayer of respondent No. 6 before the writ Court for directing the Government authorities to remove a wall which had been erected illegally by the appellant and his brother (respondent No. 7).

4. The learned Single Judge, on 15.09.2022, passed an interim order holding that



respondent No. 6 (writ petitioner) was the rightful owner of the land and therefore, he was entitled to have his possession inviolate without any interference or encroachment by the appellant herein and his brother, respondent No. 7.

5. Simultaneously, it was held that the appellant and respondent No. 7 had no right, title or interest over the land in question, specially in view of the fact that the grandfather of the appellant and respondent No. 7 had executed a deed of relinquishment in favour of the family of the appellant herein after they having realized that the entry in the land records was erroneously recorded as sikmidaar of the land holder.

6. With the aforementioned findings of fact, the learned Single Judge directed the Superintendent of Police, East Patna, to remove the encroachment from the land of the respondent No. 6 (writ petitioner) within a period of 7 days, who was also required to file a compliance affidavit by the 8th day.



7. This order was challenged by the appellant before the Supreme Court on various issues but such challenge was not entertained for the reason that the appellant had not exhausted the remedy of Letters Patent Appeal.

8. In the meantime, two further orders were passed on 19.09.2022 and 11.10.2022 disposing of the writ petition. The writ petition was disposed of in view of the report of the Government authorities that the land in question was restored to respondent No. 6. Additionally, it was directed by the learned Single Judge that in case of any interference with the peaceful possession of the property of respondent No. 6 and a complaint being made in that regard, the local police shall not sleep over the matter and shall swing into action no sooner such complaint is received.

9. Mr. Chaudhary, the learned Senior Advocate urged before us that the tenor of the order passed by the learned Single Judge reflects that a civil



suit was decided with respect to right, title and interest of the competent party. He further submits that the factual position brought forth by the writ petitioner / respondent No.6 herein was accepted as infrangible set of facts, without realizing that the appellant and respondent No. 7 had their own story to narrate.

10. Mr. Chaudhary claims that the appellant and respondent No. 7 had staked claim over the land in question not only on the basis of the survey records holding them to be *sikmidaar* but under a *hukumnama* of the *ex-zamindaar* giving the right to the appellant and respondent No. 7 to till the land. They had been in possession of the land in question.

11. Mr. Hemendra Prasad Singh, the learned Senior Advocate appearing for respondent No. 6/land owner has submitted that the learned Single Judge did not err at any point of time as the documents offered by him for the appreciation of learned Single Judge made out a clear case of encroachment and not



an issue of title. He has submitted that the land in question stood in the name of one Seikh Rashidul Haque, who is the grandfather of respondent No. 6. Since the death of his grandfather and father, respondent No. 6 had been coming in possession of the property along with his brothers and had been paying rent to the Government.

12. That the entry in the record of rights is incorrect which is further evident from the fact that the ancestors of the appellant and respondent No. 7 had executed a deed of relinquishment after realising that such entry was wrongly made. He had further submitted before the learned Single Judge that even if it is assumed that the ancestors of the appellant and respondent No. 7 were the sikmidaars, for exerting their rights as a privileged tenant, they were required to invoke the provisions of the special act in that regard. That not having been done, it was only a misadventure on the part of appellant and his brother (respondent No.



7) herein to foray into the land of the respondent No. 6 unnecessarily.

13. Another set of facts which was brought to the notice of the learned Single Judge was that the entire land in question was acquired for the purposes of construction of a Housing colony which was later de-acquired and the respondent No. 6 was again put in possession of the land. At no point i.e. at the time of acquisition and de-acquisition, was there any claim of the appellant and his brother for having any truck with the land in question.

14. The learned Single Judge, as it appears from the series of the orders brought before us, was particularly peeved by the fact that when a complaint was made by the respondent No. 6, a proceeding under Section 144 of the Cr.P.C. was started but the same was dropped on a collusive report of the police.

15. Thus, the learned Single Judge held that it was the duty of the Government and the Court to



ensure that the right to property is not violated by anyone and the State ought not to be a mute spectator in such misadventure of the wrong doers.

16. Precisely for this reason, we find that the Superintendent of Police was directed to have the encroachment cleared and the possession of the land be restored to the respondent No. 6.

17. There is substance in the submission of Mr. Chaudhary, the learned counsel for the appellant, that before doing so, the learned Single Judge ought to have taken into account that there is a dispute with respect to the title of the land and merely on few set of documents offered by the proclaimed land holder, the issue ought not to have been decided finally as if the learned Single Judge was deciding a civil suit.

18. He further laments that it is trite that in issues where the facts are disputed, no writ would lie and the order passed by the learned Single Judge is not in the nature of mandamus but is an order in the nature



of a permanent injunction against the appellant herein.

19. Though, we are of the view that the learned Single Judge ought not to have gone into such disputed set of facts and should have relegated the parties to the competent Civil Court for determination of their right and title over the land but since the appellant did not contest the matter before the learned Single Judge to any logical conclusion, we do not consider it appropriate at this stage to upset the apple cart.

20. On the contrary, respondent No. 6 had brought to the notice of the Court that the line of succession and the fact that there was no demur by the present appellant and his brother (respondent No. 7) at the time of acquisition of land and its de-acquisition, the claim of the appellant and his brother thus rested primarily on the "record of rights" showing their ancestors to be the sikmidaars which by itself would not have given them the right of a privileged tenant.

21. It is under the afore-noted



circumstances that we do not direct for any *status quo ante* but modify the learned Single Judge's order to the extent that none of the parties to the appeal shall make any attempt to alienate the property till the time the issues are decided finally by the competent Civil Court for which either of the parties could approach the competent Civil Court forthwith.

22. The status quo with respect to the land in question shall be maintained but to the complete proscription of the right to alienate the property by respondent No. 6, till the time the issue is decided by a competent Civil Court.

23. Should there be an emergent need for sale of the part of the disputed land, necessary permission can be sought from the competent Civil Court, where only the respective right of the parties could be wrested.

24. Mr. Hemendra Prasad Singh, the learned Senior Advocate for the respondent No. 6 at this



stage expostulated that since the possession of the land has been restored to respondent No. 6, if the right and title to the property is to be disputed, it ought to be done at the instance of the appellant only and not respondent No. 6. He further submits that respondent No. 6 would not be able to enjoy the property to its fullest if he does have the right to sell it in times of emergency and therefore, he has urged that he should be given a window to approach this Court for necessary permission till the time the Civil Suit with respect to title is finally decided by the competent Civil Court.

25. Mr. Rajendra Nath Singh, the learned Advocate, who had assisted Mr. Basant Chaudhary, the learned Senior Advocate on behalf of the appellant at this stage, submits that a civil suit is about to be filed for vindication of the claim of the appellant that the land belongs to him.

26. In this situation, the apprehension of the respondent No. 6 stands allayed.



27. Either of the parties shall have a right to approach the competent Civil Court in case of any breach of the conditions put in here, in the interregnum.

28. The order of the Single Judge dated 19.09.2022 stands modified to the extent indicated above.

29. The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

sharun/-
sunilkumar

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.02.2023
Transmission Date	N/A

