

In the Court of Sub Judge – II, Patna City

T.S. - 67/95

09-04-2021

Record is produced for order.

Order

Several petition on different dates is filed on behalf of plaintiff. Defendant no. 8 and 9 have also filed similar petitions. Plaintiff's petition dated 06.12.19 is filed u/s 151 C.P.C. for directing the concerning local thana Agamkuan, Patna City to maintain the *status quo* over schedule I property of the plaint. Another petition dated 02.11.2020 is filed on behalf of plaintiff for directing DM, Patna and SSP, Patna to maintain status quo over the suit land as per order of the court passed on 09.09.1996. Third petition dated 10.11.2020 is filed on behalf of plaintiff u/o 39 rule 2-A of C.P.C. 1908, wherein plaintiff has prayed to issue show cause to defendant no. 4 i.e. DM, Patna for this disobedience of courts order dated 09.09.1996 and to restrain the construction of the suit property and to maintain status quo and for compensation in favour of plaintiff. Fourth petition dated 01.12.2020 is filed on behalf of plaintiff u/s 151 CPC for recalling next date in the suit as per urgency. Plaintiff has also filed xerox copy of order of Hon'ble High Court passed in civil writ jurisdiction case no. 5473 of 2021. Photocopy of notice dated 29.01.2021 issued by Court of Circle Officer u/s 3 of Bihar Public land encroachment act, 1956, related to encroachment case no. 24/20-21 is also filed on behalf of the parties. Photocopy of objection dated 12.02.2021, in reply to notice u/s 3 of Bihar Public Land Encroachment Act, 1956, in Encroachment case no. 24/20-21 is also filed on behalf of the parties. Photocopy of notice dated 22.02.2021 under sub section 2 of section 6 of Bihar Public Land Encroachment act, 1956, related to land encroachment case no. 24/20-21 is also filed on behalf of the parties. Similarly, petition dated 02.12.2019 is also filed by defendant no. 8, wherein it is prayed to direct police concerned to maintain status quo on the disputed land. Photocopy of order dated 23.12.2020 passed by Hon'ble High Court in Criminal Writ Jurisdiction case no. 275/2020 is also filed on the behalf of the parties. Petition dated 27.01.2021 is also filed on behalf of defendant no. 9 for passing appropriate order to stop construction work going on the suit property inspite of *Status quo* order dated 09.09.1996. Photocopy of letter no. PAT-8111 dated 27.02.2020 issued by Bihar Vidhyalay Pariksha Samiti, Patna is also filed. Learned advocate have also prayed to take into account report dated 27.11.2020 filed on behalf of advocate commissioner. Since, all petitions filed by plaintiff as well as defendant is

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concerned with same fact and circumstances and parties have prayed for similar relief, accordingly all petitions are heard together. Copies of all petitions filed by plaintiff and defendant no. 8 and 9 has been served on other parties. Copies to defendant no. 3 Hindu religious trust board and defendant no. 4 DM, Patna could not be served due to absence of the parties. Concerned AGP on the behalf of the State have refused to received the copy of the petitions and have expressly pleaded that State or DM, Patna is not a parties to the suit.

Heard parties and perused all document on the record. This Title Suit no. 67/95 is filed by plaintiff for declaration that plaintiff has got perfect right title and interest over the suit land as described in schedule I of the plaint and want of the title, right and interest of the defendant and to further declare that if any forged, fake and not acted upon paper and document is produced by them (defendant), same do not bind the right title and interest of the plaintiff. As per schedule I of the plaint, description of the suit land bearing S.P. no. 2215, Khata no. - 848, Tauzi No. - 303, P.S. No. - 11, measuring and area of 5.51 acre situated at Mauza – Dhanuki Sandalpur P.S, at present Agamkuan (Old) Sultanganj, Patna with Chouhadi as North – Road, South – Nala and plot no. 2214, East – Ramanand and Bandh & etc, West – Sukhdeo Yadav, Dharmtas Choudhary, Pramod Yadav etc. Originally, plaintiff has filed the suit against two defendants only and later on other defendants i.e. from defendant no. 3 to 9 were added vide several orders starting from date 03.07.1997. From perusal of the ordersheet, it transpires that the order of *status quo* over the suit property mentioned in schedule I passed by this court on 09.09.1996. Also perused order dated 26.02.2021 passed by this court wherein, plaintiff and defendant no. 6 and 8 were directed to serve copies of their respective petitions on all defendants. Also perused notices issued to Sri Suresh Mahto by Court of Circle officer, Sadar Patna u/s 3 and u/s 6 (2) of Bihar Public Land Encroachment act, 1956 and objection filed by Sri Deo Saran Mahto. After perusal of the notices issued by C.O, Patna, it appears that the notices issued are related with land with Khata No. - 220, Khesra No. - 1296, Mauza – Kumhrar, P.S. No. - 12. Also perused notice issued dated 22.02.2021 under sub section 2 of section 6 of Bihar Public Land Encroachment Act, 1956. It transpires that a order has been passed u/s 5 (1) (c) Bihar Public Land Encroachment Act, 1956 and subsequently, notice has been issued for vacating the said encroach land. From perusal of schedule I of suit property as per plaint, it appears that the property as mentioned in schedule I in the plaint is different from the property as mentioned in the notices issued by C.O. Patna in Encroachment case no. 24/20-21. Plaintiff and defendant no. 6 and 8 has failed to filed any order of Court of Circle officer passed in land encroachment case no. 24/20-21 and have just filed notices issued in light of C.O. orders. It is also not clear as to whether Sri Suresh Mahto actually appeared before the

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court of C.O. Sadar Patna in light of 1st notice issued u/s 3 of Bihar Public Land Encroachment Act, 1956. From perusal of notices issued by Court of C.O. Patna Sadar, it transpires that encroachment case no. 24/20-21 is pending against Sri Suresh Mahto S/o Daso Mahto, who is also plaintiff no. 5 in present title suit no. 67/95 but the notices under Bihar Public Land Encroachment Act, 1956 is issued with respect to different plot as mentioned in notices. From perusal of notices issued u/s 3 & 6(2) Bihar Public Land Encroachment Act, 1956, it appears that both Notice were issued by concern authority i.e CO, Patna Sada on 29.01.2021 & 22.02.2021 itself. Though, plaintiff no. 5 was aware of fact that Encroachment proceeding has been commenced against him, but plaintiff no. 5 did not bring it to knowledge of this court till March last, for the reasons best known to the himself, though parties have been continuously filing petitions after petitions with a view to get suitable order from this court.

From the perusal of Bihar Public Land Encroachment Act, 1956, it appears that section 16 of the said act specifically bar jurisdiction of Civil Court. Section 16 of the said act reads as, no suit or other legal proceeding shall lie in any court in respect of any order passed under this act. In light of above provision of law, this court is of opinion that this courts lacks Jurisdiction to pass any order with regard to proceeding commenced under Bihar Public Land Encroachment Act, 1956 as the notice is issued with respect to the plot other than as mentioned in schedule I of title suit 67/95 pending in the court. The court is of opinion that the party concerned has appropriate remedy under the Bihar Land Encroachment Act, 1956 and it appears that parties have yet not availed any remedy under Bihar Public Land Encroachment Act, 1956.

Also perused plaintiff petition dated 10.11.2020 u/o 39 rule 2-A of CPC wherein, plaintiff has prayed to issued show cause to DM, Patna (defendant no. 4) for the disobedience of the order dated 09.09.1996 passed in this title suit. It transpires that in column no. 2 of the said petitions, plaintiff has stated that D.M, Patna (defendant no. 4) has consented and permitted the construction on the suit in the possession of defendant no. 4. In column no. 4 of above mentioned petition, it is contented that plaintiff no. 3 has also sent legal notice to S.S.P, Patna complaining about construction work being done on suit land in contravention to the court's order of status quo but S.S.P, Patna has not acted upon request. However, plaintiff has failed to filed any document / order of DM, Patna in support of column no. 2 and has also failed to filed any document with regard to contention mentioned in column no. 4. Also perused report dated 27.11.2020 submitted by advocate commissioner. From perusal of ordersheet dated 17.11.2020 of advocate commissioner, it appears that during the whole process, only plaintiff and defendant no. 6 and 8 were present

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at disputed suit land and other parties to the suit were absent. It also transpires that the said disputed suit land was identified by plaintiff and defendant no. 6 and 8 only. The field book prepared by advocate commissioner does not contain any Khata No., Khesra No., Thana No. It is also important to note that notice with regard to proceeding of advocate commissioner was sent through speed post and same has been return with endorsement of non identification, Death of party and some notices has been returned without any endorsement. It is also important to note that advocate commissioner has conducted its proceeding from 20.08.2020 to 27.11.2020, during which several restrictions were imposed by state as well as centre regulating movement of people and court functioning was also hampered due to covid-19.

In this connection, it is also important to mentioned that in *Jawahar Singh vs. Des Rai*, AIR 2002 J&K 134, Hon'ble J & K High Court has ruled that proceeding under order 39 Rule 2-A CPC is quasi criminal in nature as person committee breach of the order deserve to be imprisoned as consequence thereof. Violation of order of *status quo* is a serious matter and unless there is clear evidence, the person can not be punished on mere surmises. Further, this court is unable to understand how plaintiff in his petition dated 10.11.2020 vide column no. 2 has mentioned that the property on which construction work allegedly permitted by DM, Patna, is in possession of DM, Patna wherein in the present suit, plaintiff has claimed to be in possession of the suit property. Court is the opinion that in the case of violation of courts order of status quo, parties are legally entitled to avail remedy as per order 39 rule 2-A CPC. In this connection this court is of opinion that the parties must come to the court u/o 39 rule 2-A CPC through proper established procedure. Further, vide petition dated 02.12.2019, 06.12.2019, 02.11.2020, 01.12.2020, 27.01.2021, plaintiff and defendant no. 6 and 8 has prayed to the court to passed suitable direction to DM, Patna, SSP, Patna and concerned local Police station u/s 151 CPC. Also perused order of Hon'ble High Court, Patna passed in Civil writ Jurisdiction case no. 5473/2021. Court is of opinion that court has inherent Jurisdiction u/s 151 CPC to make order *ex debito justitiae* but the Jurisdiction can not be exercise so as to nullify the provision of the code and where the code deals expressly with a particular matter, the provision should normally be regarded as exhausting. Accordingly, this Court is of opinion that since remedy to violation of *status quo* order is specifically provided under 39 rule 2-A CPC, accordingly court is not inclined to passed any order u/s 151 CPC. With regard to proceeding initiated under Bihar Public Land Encroachment Act, 1956, plaintiff ought to have informed to this court at the earliest opportunity. Further, there appears to be contradiction in petitions filed on behalf of the parties. On one hand plaintiff has filed petition under order 39 rule 2-A alleging violation of

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status quo order and on other hand, parties have filed petition u/o 151 CPC for directing District Administration to comply courts *status quo* order passed on 09.09.1996. Even if the contention of the parties are believed in toto to be true, there is nothing in record to show that the area upon which order of *status quo* has been actually violated and the area left where parties have been threaten to be dispossessed in violation of status quo order. Also perused direction of Hon'ble High Court, CWJC 5473/2021 (2) dated 16.03.2021 wherein Hon'ble court has pleased to direct lower court to take appropriate action permissible under law to protect the interest of the parties. In light of above direction of Hon'ble Court, let copy of this order be sent to DM, Patna & SSP, Patna for complying courts orders of *status quo* as per schedule I of suit land in Title Suit 67/95. It is also important to mention that District Administration is under legal obligation to obey courts order. Further, the parties have on many occasions complained that Ld. AGP representing State and DM, Patna have refused to take copies of the petition filed by them and that has also contributed in delay of the suit. On many occasions, Court has also requested to learned AGP but he has submitted that neither State nor DM, Patna is party to the suit, hence he is not under obligation to received the petitions of the parties. On perusal of ordersheet, it transpires that for several years, the state and DM, Patna has been represented in this suit by the concern Ld. AGP and DM, Patna is still a party to the suit (Defendant no. 4). Accordingly, DM, Patna is also directed to take all necessary and appropriate steps in this regard to be well represented in the suit, so that the disposal of suit can be expedited as per order of Hon'ble High Court. Further, Hon'ble High Court vide order passed in CWJC 5473/2021 (2) dated 16.03.2021 has been pleased to direct the lower court to expedite the trial and disposed the suit at the earliest as the suit is pending for last 25 years. In light of above direction, all parties to the suit are hereby directed to be well represented of each and every dates, so that Hon'ble court direction may be complied with. Put for further proceedings on 26.04.2021.

Dictated

Succ. Sub Judge – II
Patna City