

Patna High Court - Orders

Birendra Kumar Singh vs The State Of Bihar & Ors on 20 October, 2011

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7910 of 2008

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1. Urmila Singh, wife of Late Birendra Kumar Singh
 2. Sweta Singh, daughter of Late Birendra Kumar Singh
 3. Supriti Singh, daughter of Late Birendra Kumar Singh
 4. Rakesh Kumar Singh, son of Late Birendra Kumar Singh
- All resident of New Area, Aurangabad, Police Station Aurangabad,
District Aurangabad

.... Petitioners

Versus

1. The State Of Bihar
2. The District Magistrate -cum- Collector, Gaya
3. The Circle Officer, Town, Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashwani Kumar Singh
Mr. Pankaj Kr.Das
Mr. Pankaj Kumar Singh

For the Respondent/s : Mr. (Ga10)

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CORAM: HONOURABLE JUSTICE SMT. SHEEMA ALI KHAN

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. SHEEMA ALI KHAN) 3 20-10-2011 I.A. No.5610 of 2011 has been filed for substituting the sole petitioner Birendra Kumar Singh, who died on 14.12.2010. The heirs of Birendra Kumar Singh are mentioned at paragraph 2 of the interlocutory application.

I. A. No. 5610 of 2011 is allowed and the Office is directed to substitute the name of the deceased petitioner by his heir and legal representative as described in paragraph 2 of the interlocutory application.

Heard Counsel for the petitioners and the State. The petitioner is aggrieved by Annexure 1 and 5 passed in a land encroachment proceedings, by which the original petitioner has been asked to remove the encroachment on Khesra No. 451 measuring 93 x 56 feet.

Learned Counsel for the petitioners submits that on the land in question, there is a hotel which has been running for the past 30 years. It is on the Falgu river.

Counsel for the State, on the basis of the counter affidavit, has stated that several persons have encroached upon the said river, which causes great difficulties during the period when Pind Dan is performed.

Annexure 5 is the final order supposedly passed in the encroachment proceeding. Virtually, this is a non-speaking order as it does not take into account the show cause filed on behalf of the original petitioner which supposedly indicates that the original petitioner was a bonafide purchaser of the said lands.

While considering the question as to whether the original petitioner was a bonafide title over the lands in question, obviously, the State have to consider whether the vendors of the original petitioner had the title over the lands in question.

All these aspects would be highlighted in the order passed in Encroachment Case No. 10 of 2007-08.

In the result, Annexures 1 and 5 are quashed and the matter is remanded back to the Circle Officer, Town, Gaya to hear the petitioners and pass a speaking order.

The petitioners are directed to produce a copy of this order before the Circle Officer, Town, Gaya within a period of one month from the date of receipt of a copy of this order, who will dispose of the proceedings expeditiously within a period of three months thereafter.

This writ application is disposed of with the aforesaid observations and directions.

(Sheema Ali Khan, J) Prabhakar Anand/-