

(2006) 12 PAT CK 0095
In the Patna High Court
Case No : CWJC No. 7000 of 2006

Principal, Sardar Patel Memorial College	APPELLANT
Vs	
Prasadi Choudhary and Others	RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2007) 2 PLJR 634

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Hussain, J.—At the insistence of all the parties, this case is being disposed of at this stage itself. Heard learned counsel for the petitioner, learned counsel for the private respondents and learned counsel for the State.

2. This writ petition has been filed against the judgment and order dated 19.4.2006 by which learned Addl. District Judge, 1st, Nalanda, Bihar Sharif allowed Misc. Appeal No. 22 of 2005 and set aside the judgment and order dated 23.9.2005 by which the learned Munsif, Bihar Sharif, Nalanda rejected the injunction petition filed by the private respondents no. 1 to 11 in Title Suit No. 47 of 2004.

3. Learned counsel for the petitioner submits that the land in question belongs to the State of Bihar which settled the same in the year 1978 in favour of the petitioner, namely Sardar Patel Memorial College, Nalanda, which is a constituent unit of the Magadh University. Learned counsel for the petitioner further submits that after the said settlement the College applied before the authority for providing proper assistance and protection to the authorities of the College for constructions to be made on the said settled land. When the authorities concerned refused to provide the said assistance/protection the said College move this court in CWJC No. 3999 of 2002 which was disposed of on 29.10.2002

(Annexure-3) directing the Officers/District Magistrate/Superintendent of Police/Commandant to provide proper protection to the petitioner if it proposes to raise some construction in accordance with law over the said land. Learned counsel for the petitioner also avers that against the said order of the Hon''ble Single Judge one Mahesh Yadav, who was an intervenor, filed LPA No. 91 of 2003 which was dismissed on 5.3.2003 (Annexure-4). Against the said order of the Division Bench of this court, the said Mahesh Yadav filed SLP(C) No. 13731 of 2003 (Civil Appeal No. 6022 of 2004) which was also dismissed by the Hon''ble Apex Court on 14.9.2004 (Annexure-5). However, in the said order, the Hon''ble Apex Court specifically held that no fault can be found with the view taken by the High Court that so long as the lease in favour of the College stands its peaceful enjoyment, and that too in accordance with law, cannot be permitted to be obstructed by anyone else. It was also observed that if the appellants before the Supreme Court have any right in the land capable of being upheld under the civil law, then the remedy of filing a civil suit in that regard is not taken away by the judgments of the High Court.

4. Learned counsel for the petitioner further submits that in view of the aforesaid observation of the Hon''ble Apex Court, two title suits were filed. One bearing Title Suit No. 47 of 2004 was filed by respondents no. 1 to 11, whereas the other bearing Title Suit No. 57 of 2004 was filed by the above named Mahesh Yadav for setting aside the lease in favour of the College and also for other ancillary reliefs. Learned counsel for the petitioner also contends that in both the said suits petitions under Order 39 Rules 1 and 2 of the CPC were filed for restraining the defendant-petitioner from disturbing the peaceful possession of the plaintiffs respondents of those suits over the portion of the suit land, but the said petitions were rejected by the learned trial court, namely Munsif, Biharsharif, Nalanda on 23.9.2005 (Annexure-1) by a reasoned order holding that there was neither any prima facie case, nor was there any balance of convenience in favour of the plaintiffs. Learned counsel for the petitioner further states that against the said order passed by the trial court, both the sets of plaintiffs filed two Miscellaneous Appeals, one bearing Misc. Appeal No. 22 of 2005 was filed by Mahesh Yadav, whereas the other namely Misc. Appeal No. 23 of 2005 was filed by respondents No. 1 to 11 of the instant writ petition and both the said appeals were allowed by the learned Addl. District Judge, 1st Nalanda, Biharsharif on 19.4.2006 (Annexure-2) directing the petitioner (defendant) not to disturb in performances of any peaceful religious rites and Poojas etc. over the suit lands till the disposal of the suit and also directed the learned trial court to expedite the disposal of the suit.

5. Learned counsel for the petitioner further submits that the impugned order of the lower appellate court is absolutely illegal and perverse as it has been passed without considering the judgments of this court as well as of the Apex Court and also without properly appreciating the legal requirements for granting injunction.

6. On the other hand, learned counsel for private respondents no. 1 to 11

(plaintiffs) vehemently opposes the contentions raised by the learned counsel for the petitioner and submits that the settlement made by the State in favour of the petitioner was on the basis of an inquiry report (Annexure-10) which was absolutely frivolous and misconceived without considering the real position of the land in question which fact has been found by the authorities themselves in the subsequent inquiry reports dated 5.10.2001 and 19.12.2001 (Annexure-A series to the counter affidavit filed on behalf of respondents no. 1 to 11). Learned counsel for the said respondents further states that since the settlement itself was found to have been made on a wrong inquiry report, the settlement is clearly illegal and bad and on its basis, no right has accrued to the petitioner. He also avers that it is the plaintiffs-respondents and the people of the area who have been using the said Gairmajarua Aam land in question as Ashmashan Ghat and burial ground with various idols of Hindu deities along with ponds used for various types of Poojas and land used for holding Mela every year time to time and thus the defendant-petitioner has no valid right over the suit land. Learned counsel for the said respondents further submits that Government is itself going to set aside the said settlement and even mutation has not yet been done and no construction has been made except one room and the College is functioning at a place two kilometres away from the suit land. Hence, he submits that the impugned order of the lower appellate court is legal and justified and needs no interference.

7. Learned counsel for the respondent-State fully supports the contentions raised on behalf of the learned counsel for the private respondents.

8. Having heard learned counsel for the parties and after perusing the materials on record, it is quite apparent that earlier when the matter traveled up to the Apex Court it was found by the Hon'ble Apex Court that no fault can be found with the view taken by the High Court that so long as the lease in favour of the College stands its peaceful enjoyment and that too in accordance with law, cannot be permitted to be obstructed by anyone else. This position has not yet changed as the lease in favour of the College still stands and has not been set aside or cancelled and hence according to the opinion of the Hon'ble Court the peaceful enjoyment of the land in question in accordance with law cannot be permitted to be obstructed by anyone else until the settlement is set aside or cancelled which admittedly has not yet been done.

9. The lower appellate court has found prima facie case only on the ground that the land in question was earlier recorded as Gair Mazarua Aam and some portion of which was being used as Ashmashan Ghat containing various idols of Hindu Deities and ponds used for Poojas and vacant land used for Langoti Mela of Mani Baba and Melas of Ramnaumi and Shivratri. It is not clear from the said order that the said functions were being held from which date, whether it was being done since time immemorial creating any right in the general public for use of the same for the said purpose or it has been started recently only for the purpose of grabbing public land. On the other hand, it is not in dispute that the

land belonged to the State of Bihar which had duly settled it with the College which is now a constituent unit of Magadh University.

10. Hence, in the aforesaid circumstances and also in view of the observation made by the Hon''ble Apex Court, it is quite apparent that no prima facie case exists in favour of the plaintiffs-respondents. So far the questions of balance of convenience and irreparable loss are concerned, they cannot legally be assumed in favour of the plaintiffs, who admittedly have no title over the suit land nor they have been in continuous possession of the same for any substantial period. Since the essential ingredients for an order of injunction are absent, no injunction can legally be granted in favour of the plaintiffs in such cases. Accordingly, the impugned order/judgment dated 19.4.2006 (Annexure-2) passed by the lower appellate court is set aside and the order of the trial court dated 23.9.2005 (annexure 1) is upheld. However, the trial court is directed to expedite the disposal of the suit preferably within a period of eight months from the date of receipt/production of a copy of this order, as early decision of the case is necessary for both the sides. As a result, this writ petition is allowed.