

(2021) 02 PAT CK 0197

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8131 Of 2020

Syed Asghar Ali

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Citation : (2021) 02 PAT CK 0197

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Shahabuddin Azeem, Md. Khurshid Alam, Majid Mahboob Khan

Final Decision : Disposed Of

Judgement

1. Heard Mr. Shahabuddin Azeem, learned counsel for the petitioner and Mr. Md. Khurshid Alam, learned AAG 12 along with Mr. Majid Mahboob

Khan, learned AC to AAG 12 for the State.

2. The petitioner has moved the Court for the following reliefs:

â??That the present writ petition is being preferred before this Honâ??ble Court for issuance of writ, writs, order, orders, direction, directions,

specially a writ of mandamus directing the Collector-cum- District Magistrate, Nawada to stop forthwith the construction work going on over R.S.

Plot No. 1096, 1097 and 1100, an area covering about 15 acres, out of total 35 acres, pertaining to Plot No. 1093, 1094 and 1095, for which judgment

and decree passed by the learned Sub-Judge 1st, Nawada in Title Suit No. 432 of 2016, CIS No. 468 of 2016 (Syed Asghar Ali Vs. State of Bihar

through the Collector, Nawada and Circle Officer, Sadar Nawada).

Further be pleased to restrain the Collector, Nawada for any unlawful coercive step against the petitioner and their workers present at the land which

is under the possession of the petitioner from the year 1945 and before 1945 his father Late Syed Mohammad Mehdi, resident of Guzri Bazar, Patna

City, P.S. Khaje-kalan, District- Patna-800008.

And further be pleased to pass such order, orders as your Lordships may deem fit and proper in the facts and circumstances of the case in

accordance with law.â??

3. The following facts are not in dispute: For the lands in question the petitioner filed a Title Suit which was decreed in his favour confirming his title

and possession over the same. Thereafter, construction was being made on a portion of the lands in question by the authorities for an Engineering

College. The State also filed appeal against the judgment of the Civil Court in the Title Suit in favour of the petitioner, which is still pending. Further,

the petitioner filed an injunction petition in the appeal to restrain the authorities from making construction over the lands in question.

4. Learned counsel for the State submitted that once the petitioner has a decree in his favour, if there was any violation of the same, his remedy was

to file an execution case but not choosing to do that and coming before this Court and also filing injunction petition in the appeal filed by the State are

thoroughly misconceived. It was submitted the Court would not interfere in the matter as the petitioner has a decree of a competent Civil Court in his

favour and the remedy available to him under the common law is required to be availed of and the Court would not act as an executing authority of

any order passed by the Civil Court for which the Code of Civil Procedure, 1908 confers special procedure and jurisdiction on the Courts below. It

was further submitted that, as it is, the interest of the petitioner is protected, for if ultimately he succeeds, whatever investment or construction the

authorities have made would pass on to the petitioner and, thus, the petitioner stands to gain.

5. Faced with the situation, learned counsel for the petitioner submitted that the matter be disposed off with liberty to move before the Court below for

effective implementation of the decree itself in his favour with regard to the lands in question.

6. Learned counsel for the State does not object.

7. In view thereof, as prayed for by learned counsel for the petitioner, the writ petition stands disposed off with liberty aforesaid. It is made clear that

the Court has not expressed any opinion on the merits of the matter.

8. The interim order dated 29.09.2020 restraining the authorities from making any construction upon the lands in question stands vacated.

9. On the apprehension expressed by learned counsel for the petitioner, with regard to any adverse effect due to disposal of the present case, the

Court would only observe that this order shall not prejudice the petitioner in any proceeding which he may institute with regard to the lands in question

based upon the decree in his favour in the suit.