

(2002) 07 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 3466 of 2002

Uday Kumar Bhagat

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 PLJR 524

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—Long ago the Privy Council observed that in India the real ordeal for a decree holder began after he was able to obtain the decree. Now the position seems to be even worse and it appears that a decree against the Government is practically unexecutable atleast at the level of the execution Court. The Petitioner who is the decree holder finding no way to have his decree executed has come to this Court with this petition under Article 226 of the Constitution making a desperate appeal.

2. The Petitioner successfully established his rights and title over the suit land in two successive suits. In the first case the trial Court declared his title over the land in dispute and decreed the suit in his favour. The State and its officials, Defendants in the suit took the matter in appeal being Title Appeal No. 4 of 1984. But the appellate Court rejected the appeal and affirmed the decree passed by the trial Court. Notwithstanding the judgments and decrees passed by Courts of competent jurisdiction the Defendants persisted in their interference with the Petitioner's right over the property and this forced him to bring another suit being Title Suit No. 4 of 1997 seeking a decree of permanent injunction against the State and its officials. This suit too was decreed in his favour.

3. He then put the decree to execution in Execution Case No. 2 of 1999. On the basis of this decree the Petitioner desires to construct a boundary wall around his land so as to separate it from the adjoining compound of the Government

hospital at Mauza Beldaur in the district of Khagaria.

4. Having regard to the nature of dispute and apprehending a law and order problem the execution Court directed the Petitioner to deposit necessary cost for deputation of Magistrate and armed forces under whose protection the decree might be executed and the Petitioner might be able to construct the boundary wall. The Petitioner duly deposited the cost for deputation of Magistrate and armed forces. That was on 20.8.2001. According to the Petitioner after the necessary cost was deposited, requisitions and reminders were sent to the Dist. Magistrate and the Supdt. of Police but the team of Magistrate and armed forces was never made available for execution of the decree.

5. According to the State, the Dist. Magistrate had deputed a Magistrate and some armed forces on 30.8.2001 and 1.9.2001 but on those dates the Petitioner did not turn up.

6. Be that as it may, the matter is now before this Court. On the previous occasion the J.C. to G.P. II was asked to obtain definite and unequivocal instructions from the Dist. Magistrate as to when he would depute a Magistrate with armed forces for the execution of the decree in Execution Case No. 2 of 1999.

7. Mr. Sinha, J.C. to G.R. II has received a letter, dated 12.7.2002 from the Dist. Magistrate, Khagaria in which it is stated that the Dist. Magistrate was ready to depute a Magistrate with armed forces on any date on which the Nazir from the Civil Court might come on the spot for execution of the decree.

8. In these facts and circumstances, the Presiding Officer of the Court before whom Execution Case No. 2 of 1999 is pending is directed to ask the Civil Court Nazir to go to the land forming the subject matter of the decree on August 17, 2002 at 10.00 A.M. The Dist. Judge, Khagaria shall make it convenient to relieve the Nazir from his other duties so that he may go for the Execution of the decree over the land in question. The Dist. Magistrate shall without fail depute a Magistrate with sufficient armed forces so that the Petitioner may be able to construct the boundary wall around the suit land without any let or hindrance. The Petitioner will try to complete the construction of the boundary wall on August 17 and 18, 2002.

9. With these observations and directions, this writ petition stands disposed of.

10. Let a copy of this order be handed over to the J.C. to G.P. II.