

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.303 of 2024
In
Civil Writ Jurisdiction Case No.7124 of 2021

Santosh Kumar Ishwar, S/o Brahmdeo Ishwar, resident of village Siuri, within Manjhaul Gram - Panchayat, 4, P.S.- Chairiya Bariyarpur, Dist.- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar The District Magistrate, Begusarai.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The District Magistrate cum Collector, Begusarai.
5. The Sub-Divisional Officer, Manjhaul Sub-Division, Begusarai.
6. The Gram Panchayat Raj Manjhaul through its Mukhiya, P.S.- Chairiya Bariyarpur, Sub- Division Manjhaul, Dist.- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Madan Prasad Singh No.2
For the Respondent/s : Mr.Additional Advocate General (5)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 20-07-2026

The instant LPA challenges an order dated 28th of February, 2024 passed by the learned Single Judge in C.W.J.C. No. 7124 of 2021. The writ petition having been dismissed by the learned Single Judge, the appellant has preferred the instant appeal assailing the judgement passed by the learned Writ Court.

2. The facts leading to the filing of the instant appeal is derived from paragraph no. 2 of the impugned



judgement which runs as hereunder:-

“2. The present writ petition has been preferred for the issuance of writ/writs, direction/directions, Order/Orders, Command/C ommands and for the issuance of writ commanding the Respondents not to interfere in peaceful possession of their land by construction of water Head Tank and Pipe line channeling for water supply under ‘Jal Nal Yojana’ in Manjhaul -4 Gram Panchayat’s village Siwari and other village for implementation of Jal Nal Yojana under instruction of local body i.e. Gram Panchayat Manjhaul 4 without either consent of land holder or acquisition of Land under Land acquisition process.”

3. The contention of the State-respondent before the Writ Court was that the disputed land in question was donated to the Government by the ancestors of the appellant. Moreover, the disputed land along with other land is the subject matter of Title Suit No. 137 of 1994 pending in the Court of learned Civil Judge, Senior Division 5th, Begusarari in which the appellant has been impleaded as defendant no. 22.

4. It is argued by the learned Advocate for the appellant that no deed of gift in respect of immovable



property can be executed except by a registered deed of conveyance. The claim of the State-respondent that the land in question was donated orally is absolutely false.

5. The learned Trial Judge wrongly held that the land in question was donated to the State Government by oral gift. Therefore, the appellant is entitled to have peaceful possession over the disputed land.

6. It is contended by the learned Advocate for the State, on the other hand, that the land in question is the subject matter of a suit for partition being Title Suit No. 137 of 1994. In view of such circumstances, the land in question cannot be held to be exclusively owned and possessed by the appellant.

7. Having heard the learned Counsels for the parties, we are of the view that the learned Single Judge misplaced his logic holding inter alia that the ancestors of the appellant transferred the land in favour of the Government by oral gift. The gift being a mode of transfer is governed by the Transfer Of Property Act and it must be done by executing a registered deed of gift coupled with the intention of the doner to deliver possession of the property in question and acceptance thereof by the donee.

8. The execution of a deed in gift and acceptance



thereof by the donee is a question of fact which cannot be ascertained by the Writ Court. Moreover, the disputed land is the subject matter of a partition suit being Title Suit No. 137 of 1994. Until and unless partition suit is disposed of by way of final decree exclusive ownership of the appellant over the disputed land cannot be established.

9. The Writ Court held inter alia that the water tank was constructed in the year 2009 on the disputed land by Public Health Engineering Department. After a lapse of about 12 years, the appellant / writ petitioner approached the Writ Court for relief. Therefore, the writ petition is fit to be rejected on the ground of delay and laches.

10. We are not satisfied with the view subscribed by the learned Trial Court. If a person is dispossessed illegally by the Government, the period of limitation is 30 years.

11. Be that as it may, the instant appeal is disposed of with the following direction that it shall be open for the appellant to either take recourse of recovery of land or to seek for compensation only after his exclusive title is established in Title Suit No. 137 of 1994. This liberty is granted to the appellant relying on the principle that the property is an indispensable safeguard against tyranny and



economic oppression of the Government. Forcible expropriation of private property of a person from rural area by the State, without following any lawful procedure or compensation, is violative of constitutional right under Article 300A, read with Article 21, of the Constitution of India. The decision of the Hon’ble Supreme Court in *Vidya Devi v. State of H.P., & Ors.* reported in *(2020) 2 SCC 569* emboldens our view in this regard.

12. For the reasons stated above, the instant appeal is disposed of, holding, inter alia, that the writ petition is not maintainable at this stage. However, the writ petitioner shall have the special liberty once his title is established by the Civil Court for claiming his land or compensation.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

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