

IN THE HIGH COURT OF JUDICATURE AT PATNA

Arun Kumar Singh

v

The State of Bihar & Others

civil Writ Jurisdiction Case No. 6551 of 2011

25 April 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

- Whether the petitioner, being a power of attorney holder of a company under liquidation, could claim protection of possession?
- Whether the writ petition is maintainable in light of disputed questions of title and factual complexities surrounding the nature and ownership of the land?

Headnotes

Petitioner has failed to show to this Court any document, which would demonstrate that the petitioner has acquired right, title and interest over the land in question. It is a well settled law that a power of attorney is not an instrument of transfer with regard to any right, title or interest in an immovable property. (Para 7)

Disputed question of facts and complex question of right, title and interest of the respective parties are involved in the present case, which cannot be decided in a writ petition under Article 226. (Para 8)

Writ petition is devoid of any merit, hence, the same is dismissed. (Para 9)

Case Law Cited

Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana, **(2012) 1 SCC 656**; Shri Sohan Lal v. Union of India, **AIR 1957 SC 529**; Punjab National Bank v. Atmanand Singh, **2020 SCC Online SC 433**; Thansingh Nathmal v. Superintendent of Taxes, **AIR 1964 SC 1419**; Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, **(1974) 2 SCC 706**; Govt. of Andhra Pradesh v. Thummala Krishna Rao, **(1982) 2 SCC 134**

List of Acts

Constitution of India – Article 226, Bihar Survey and Settlement Manual, 1959 – Section 467

List of Keywords

Power Of Attorney; Ara Sasaram Light Railway; Land Acquisition; Kaiser-E-Hind Land; Status Quo; Immovable Property Title; Alternative Remedy; Specific Performance; Mutation; Civil Suit

Case Arising From

Challenged the letter dated 02.02.2011 issued by the Sub-Divisional Officer, Sasaram, asking the petitioner to produce documents related to L.A. Case No. 24 of 1910-11 and directing him to maintain status quo over the land.

Appearances for Parties

For the Petitioner: Mr. Ambuj Nayan Chaubey, Advocate

For the Respondents: Mr. Sudama Kumar, AC to SC 12

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 6551 of 2011

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Arun Kumar Singh S/o Sri Hari Narayan Singh, R/o Mohalla - Premchand
Path, P.S. Sasaram, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home, Patna.
2. The Principal Secretary, Land Reforms, Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Sub Divisional Officer, Sasaram, Rohtas.
5. The Additional District Magistrate, Rohtas.
6. The Circle Officer, Sasaram, Rohtas.
7. The Anchal Amin, Sasaram, Rohtas.
8. The Officer in Charge, P.S. Sasaram, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambuj Nayan Chaubey, Advocate
For the Respondent/s : Mr. Sudama Kumar, AC to Sc 12

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 25-04-2023

1. The present writ petition has been filed for interdicting the respondents from interfering with the right, title, interest and peaceful possession of the petitioner over the land in question as also for quashing the letter dated 02.02.2011, issued by the Sub-Divisional Officer, Sasaram, whereby and whereunder the petitioner has been asked to produce all the documents pertaining to the land in question in connection with Land Acquisition case no. 24 of 1910-11 and further directing the petitioner to maintain *status quo* with regard to the land in



question so that law and order problem is not created.

2. The brief facts of the case, according to the petitioner, is that the land in question is a part of land appertaining to Tauzi nos. 5805, 5806 and 7100, admeasuring 7.35 acres, situated at village- Mahdiganj, Rasulpur, Salempur Kuraich and Sharifabad, District-Rohtas, which was acquired by the State of Bihar for Ara Sasaram Light Railway Company (hereinafter referred to as the “Company”) and which was subject matter of the Land Acquisition case no. 24 of 1910-11. It is submitted that consequent upon the acquisition, the Company came into exclusive possession of the land acquired in between Sasaram to Ara including the present land in question located in village-Rasulpur. It is further submitted that the Company carried on its operation for more than half a century between Sasaram and Ara, however, subsequently, it had to go for voluntary liquidation, however, the land admeasuring 9 feet wide passage, as per the agreement with the erstwhile District Board, Sahabad, was returned back to the *Zila Parishad* by the Company. In the year 1977, the Company is stated to have filed a company petition bearing Company Petition no. 623 of 1977, before the Hon’ble High Court of Calcutta, whereafter it had applied for grant of permission to sell the said acquired land and then the



Hon'ble Calcutta High Court had granted permission to the liquidator of the Company to sell the land at the highest price, giving the State of Bihar a preferential right to purchase at the highest price offered, vide order dated 07.02.1992, which was challenged by the State of Bihar by filing an Appeal but the same was dismissed by the learned Division Bench of the Calcutta High Court, by an order dated 07.12.1992, whereupon the State of Bihar had preferred a Special Leave Petition bearing S.L.P. (C) No. 22256 of 1997, before the Hon'ble Supreme Court of India but the same was also dismissed vide order dated 15.12.1997.

3. It is the further case of the petitioner that thereafter, various litigations were resorted to by the parties, however, the liquidator of the Company Sri K.N. Patehpuria had executed a specific power of attorney in favor of the petitioner on 03.12.2002, authorizing him to sell 02 acres of land at Sasaram village- Rasulpur and Rasulpur Sarifabad, Mohalla-Gourakshni in the town of Sasaram appertaining to Municipal Survey Plot no. 673, out of total area admeasuring 5.38 acres, however, the respondent- State authorities, without any authority of law, had directed the petitioner vide Memo dated 02.02.2011 to maintain *status quo* qua the land in question. It is also submitted that



pursuant to a co-ordinate Bench of this Court having passed an order dated 04.01.2011 in a writ petition filed by the Company bearing C.W.J.C. no. 6641 of 2009, the petitioner started filling soil in the land in question, which exclusively stands in the name of the Company, however the petitioner is being disturbed from carrying out with the soil filling work.

4. The learned counsel for the petitioner has submitted that the petitioner is being unnecessarily precluded from his peaceful possession over the land in question, hence, the respondents be interdicted from interfering with the right, title, interest and physical possession over the land in question.

5. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit, filed in the present case by the Circle Officer, Sasaram, Rohtas that the land in question was acquired for Arrah Sasaram Light Railway through Land Acquisition case no. 24 of 1910-11, by a declaration published on 15.09.1910, which clearly shows the boundary of the acquired land. The learned counsel for the respondent- State has also referred to the map of the acquired land, annexed as Annexure B to the counter affidavit, filed in the present case to show that the acquired land lies North of the



road which turns towards East from Ara Sasaram Government road and goes to Sasaram Broad-gauge Railway Station through Mohalla-Gourakshani and the said road is known as Premchand Path, which runs from west to east, however the land now being claimed by the petitioner, to be a part of the acquired land, is situated towards the south of the said road towards the track of Central Eastern Railway. The cutting of M.G (Mughalsarai Gaya) Railway has been recorded in C.S. Khatiyani as C.S. Plot no. 41, village-Rasulpur, Area-12.04 acres, in the name of KAISER-E-HIND, which has not been claimed by the petitioner as the acquired land. It has been further submitted that the various proceedings as also the details of the acquired land will show that Ganesh Prasad and others were the proprietors of Tauzi No. 5805, Sheikh Mohammad Akbal and others were the proprietors of Tauzi no. 5806 and Kuldeep Sahai and others were the proprietors of Tauzi no. 7100. This will further show that L.A. plots of acquired land were 2 to 30 and compensation of the acquired land were paid to the respective tenants. It is also apparent that Amit Hussain and others were the tenants of acquired area of Tauzi No. 5806. Sheo Balak Kurmi was the tenant of acquired area of tauzi No. 7100 and Rupa Kairi and others were the tenants of the acquired area of Tauzi No. 5805.



6. Thus, it is the submission of the Ld. Counsel for the respondent State that apparently, no portion of KAISER-E-HIND land (C.S Plot no. 41) was ever acquired in L.A. Case no. 24 of 10-11 nor there was any proposal to acquire such government land. It is also stated that fraudulent entries have been made in the records of right of the year 1929-30, showing Ara Sasaram Light Railway as occupier of KAISER-E-HIND land, particularly with respect to C.S. Plot no. 41, admeasuring 12.04 acres and thereafter, upon detection of the said fraudulent entry, Appeal no. 01-09 was filed under Section 467 of the Bihar Survey and Settlement Manual, 1959 for exclusion of said fraudulent entries from the finally published records of C.S. Plot no. 41, 42 and 43, appertaining to CS Khata no. 95 of village-Rasulpur, District-Rohtas, however, the said proceedings were quashed by a co-ordinate Bench of this Court vide order dated 04.01.2011, passed in C.W.J.C. no. 6641 of 2009, nonetheless, it is submitted that the land acquired for construction of Ara Sasaram Light Railway vide L.A. case no. 24 of 1910-11 is different than the KAISER-E-HIND land i.e. C.S. Khata no. 95, CS Plot no. 41, 42 and 43. It is also submitted that Company petition No. 623 of 1977 pertains to the land acquired for the company, however the same does not pertain to the KAISER-E-



HIND land. It is next contended that the petitioner has not produced even a chit of paper to show that any part of C.S. Plots no. 41, 42 and 43 were ever acquired for the Company. It is also contended that if the State Authorities want to examine the documents of L.A. case no. 24 of 1910-11 and the petitioner has been requested to help the State Authorities to come to a just and legal conclusion with regard to the nature, category and ownership of the disputed land in question, there is nothing wrong about it. Hence, in case, the impugned letter dated 02.02.2011 was issued to the petitioner by the Sub-Divisional Officer, Sasaram, the petitioner ought to have cooperated with the respondent-State Authorities. It is further contended that since the petitioner has started filling up the pond existing on the KAISER-E-HIND land, which was not acquired for the Company but is a public pond, the petitioner has been directed to maintain *status quo*, vide the impugned letter dated 02.02.2011. Thus, it is submitted that since disputed question of facts and complex question of right, title and interest of the respective parties are involved in the present writ petition, the present writ petition is not maintainable and is fit to be dismissed.

7. I have heard the learned counsel for the parties and gone



through the materials on record. This Court finds from the records that the petitioner is merely a power of attorney holder, by virtue of a specific power of attorney dated 03.12.2002, executed in his favor by the Ara-Sasaram Light Railway Company (in voluntary liquidation) with regard to 02 acres of land at Sasaram village- Rasulpur and Rasulpur Sarifabad, Mohalla-Gourakshni, District-Rohtas bearing M.S. Plot no. 673, out of total area admeasuring 5.38 acres, by which the petitioner has been authorized to act for and on behalf of the Company to sell, convey and assign the said 02 acres of land or parts thereof in consideration to be paid to the Company, to enter into any agreement for sale or execute deed of conveyance in respect of the said property and to sign and execute the same by appearing before the registering authority, to represent the Company before the concerned authorities in connection with the said property, to inspect the files, records etc. and obtain copies thereof from various Authorities with regard to the said property, to appoint, engage and dismiss Legal Practitioners to represent the Company with regard to the said property and to sign in the name and on behalf of the Company, documents, applications, deeds and conveyance with regard to the said property. This Court finds that the learned counsel for the



petitioner or for that matter the petitioner has failed to show to this Court any document, which would demonstrate that the petitioner has acquired right, title and interest over the land in question. It is a well settled law that a power of attorney is not an instrument of transfer with regard to any right, title or interest in an immovable property. In fact, a Three Judges Bench of the Hon'ble Apex Court in the case of ***Suraj Lamp and Industries Private Limited vs. The State of Haryana and another***, reported in ***(2012) 1 SCC 656*** has held that the sale of immovable property through sale agreement, will, general power of attorney is not valid. In this regard, it would be relevant to quote paragraphs no. 23 to 27 of the aforesaid judgment, rendered in the case ***Suraj Lamp and Industries Private Limited (supra)***, herein below:-

“23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841], that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/ GPA/will transactions are some kind of a recognised or accepted mode of transfer and that



it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to



a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give



a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."

8. Yet another aspect of the matter is that the pleadings made in the present case and the arguments advanced by the respective counsel for the parties would show that disputed question of facts and complex question of right, title and interest of the respective parties are involved in the present case, which cannot be decided in a writ petition under Article 226 of the Constitution of India. Moreover, the present writ petition is embryonic, inasmuch as neither the petitioner appears to have acquired right, title and interest with regard to the property in



question nor any valid sale deed has been executed in between the Company and the petitioner and moreover, he has approached this Court by filing a writ petition merely upon being served with a letter dated 02.02.2011, issued by the Sub Divisional Officer, Sasaram, requesting him to produce documents in connection with Land Acquisition case no. 24 of 1910-11. In case, the petitioner is sanguine about his claim, he can take recourse to such other alternative remedies, as are otherwise available under the law including that of filing of a civil suit before the learned civil court having competent jurisdiction. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the following cases:-

*“(i) In the case of Shri Sohan Lal vs. Union of India & Another, reported in **AIR 1957 SC 529**;*

*(ii) In the case of Punjab National Bank & Others vs. Atmanand Singh & Others, reported in **2020 SCC Online SC 433**;*

*(iii) In the case of Thansingh Nathmal and Ors. Vs. Superintendent of Taxes, Dhubri and Ors., reported in **AIR 1964 SC 1419**;*

*(iv) In the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, reported in **(1974) 2 SCC 706 at page 715**;*

*(v) In the case of Government of Andhra Pradesh vs. Thummala Krishna Rao & Anr., reported in **(1982) 2***



SCC 134.”

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove in the preceding paragraphs as also taking into account the well settled principles of law laid down by the Hon’ble Apex Court in a catena of decisions, as referred to hereinabove, this Court finds that the present writ petition is devoid of any merit, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.09.2023
Transmission Date	NA

