

**(2022) 04 PAT CK 0080**

**Patna High Court**

**Case No:** Letters Patent Appeal No. 18, 29 Of 2011 In Civil Writ Jurisdiction Case No. 296 Of 2010

Principal, Nalanda Medical  
College And Hospital.

APPELLANT

Vs

Sheela Srivastava

RESPONDENT

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**Date of Decision:** April 26, 2022

**Acts Referred:**

- Constitution Of India, 1950 - Article 226

**Hon'ble Judges:** Ashutosh Kumar, J; Anjani Kumar Sharan, J

**Bench:** Division Bench

**Advocate:** J.S. Arora, Manoj Kumar, Manish Dhari Singh

**Final Decision:** Disposed Of

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**Judgement**

1. Heard Mr. J.S. Arora, the learned Senior Advocate, who was requested by this Bench earlier to render assistance in these two Appeals,

notwithstanding the fact that Mr. Arora had represented the then Principal of Nalanda Medical Collidge and Hospital, Patna, who was impleaded as

respondent No. 7 in the main writ petition.

2. The respondents/land-lords had filed a writ petition before this Court vide C.W.J.C. No. 296 of 2010 for directing the respondents, viz., the

government officials as also the Principal, N.M.C.H. to remove the illegal encroachment over Plot No. 265 ad-measuring 1.14 acres and also for a

direction restraining the concerned respondents from interfering with rights of the petitioner over the land in question or from obstructing him in his

peaceful enjoyment of his property and other ancillary reliefs.

3. It was the case of the writ-petitioner that approximately 28 acres of land was acquired by the State Government, out of which, Plot No. 265 was acquired for N.M.C.H. Later, 1.14 acres of land from aforesaid Plot No. 265 was released from acquisition, but the writ-petitioner contended that the building has been constructed over some area which was not acquired and given to the N.M.C.H., but which had been released to the land owners.

4. The learned Single Judge while disposing of the writ petition took into account the inter se dispute between the share-holders of the property in question; the result of the Partition Suit No. 124 of 1967 and certain other facts to come to the conclusion that the N.M.C.H. had extended its premises beyond the acquired area.

5. The writ petition, referred to above, was allowed with a cost of Rs. 25,000/- to be paid by the Principal, N.M.C.H. to the writ-petitioner, to be recovered from his own pocket for compensating the loss which had accrued to him. The learned Single Judge also made it clear that such saddling of cost was only symbolical and only a fraction of the loss which had accrued to the writ-petitioner for approximately three decades.

6. Mr. Arora, the learned Senior Advocate, submits that the Principal, N.M.C.H. was never noticed and, therefore, this order was passed in his absence. Be that as it may, he has further argued that in the Appeal, preferred by the Principal of the College, the Division Bench was not persuaded to interfere with the order passed by the learned Single Judge on the ground that the matter involves question of Title and disputed facts and it was held by the Division Bench that the dispute was not essentially of Title but of the fact whether the land which was released from acquisition had been wrongly included in the premises of N.M.C.H, which pertained to simple measurement and demarcation and for that the parties ought not to be sent to the Civil Courts.

7. After having discarded, the plea of the present appellant of the matter being of civil dispute which could not have been properly adjudicated under Article 226 of the Constitution of India, the Division Bench directed for measurement and demarcation of the land of Plot No. 265 with a view to ensure that only 1.24 acres of the said plot acquired by the State remains under the possession of the N.M.C.H. Such demarcation was directed to be

carried out by qualified Amins in presence of two survey knowing pleaders to be appointed by the Execution Munsif and for such exercise, the cost was to be borne by the State and the appellant/N.M.C.H. A report was required to be submitted to the Division Bench within a period of six weeks.

The parties were also given the leave to file their maps, documents, khatas and khatiyans, so that the measurement could be done appropriately and to everybody's satisfaction. The Execution Munsif was further cautioned that the entire purpose of demarcation and measurement was only to

ensure that 1.24 acres of land out of the Plot No. 265 be included in the premises of N.M.C.H. and no further.

8. The matters appears to have remained pending for several years since 2011.

9. A report was submitted in the year 2013 which has been brought on record by way of second supplementary affidavit by the appellants.

10. In our estimation, the report is absolutely rudimentary and does not disclose the starting point of measurement. No effort has been made to identify

the original Plot No. 265 and the remaining 1.24 acres of the land therein and the other area falling in that plot which was later returned to the land-

lords. 1.24 acres of land, out of the aforesaid Plot No. 265, was initially acquired which comprised several plots.

11. Mr. Arora has submitted that Plot No. 265 spans across 11 plots. Since no demarcation was made with respect to the plots in Plot No. 265,

therefore any report by the Amin would be defective and would not in any manner resolve the dispute between the parties.

12. An objection has been raised with respect to such measurement by appellant No. 7/the Land Acquisition Officer, Patna with respect to such

report. The contention of appellant No. 7 is that the basic document which ought to have been taken into account for any further exercise in the

matter was the map of the Land Acquisition, on the basis of which possession was handed over to the N.M.C.H. The aforesaid map was of 28.06.1978.

Neither the Execution Munsif nor the survey knowing Amins considered the said document/map before submitting their report.

13. The map in question has been brought on record.

14. It has, therefore, been urged on behalf of appellant No. 7 that the measurement has been carried out arbitrarily and it is not at all in accord with

the direction of the Division Bench with respect to the manner in which such report had to be prepared.

15. Because of the demise of the contesting respondents in these set of Appeals, their heirs were substituted and on one occasion, one of the

gentleman Advocates of this Court informed us that he has been telephonically informed that he had to appear in these matters, but he was waiting for

the vakalatnama to arrive. Today, when the matter was called out, this Court was again informed that the aforesaid Advocate has not received any

instructions in these matters and, therefore, he will not appear in these cases.

16. Mr. Arora, the learned Senior Advocate, has submitted that in the first instance the order passed by the writ-Court was not sustainable in the eyes

of law as it took into account unilateral assertion of the land owner and the appellant herein did not get any opportunity to contest the case. However,

these Appeals were filed because the Court had directed the Principal, N.M.C.H. for payment of fine of Rs. 25,000/- from his own pocket.

17. No doubt, the predecessor Division Bench found that the issue was not only of Title but of demarcation, but as on date, we find that there is no

dispute now or otherwise, the private respondents would have contested these cases.

18. Be that as it may, since the heirs of the original writ-petitioner/respondents in these Appeals have not appeared even today, we are persuaded by

Mr. Arora, the learned Senior Advocate to drop the present proceedings with the rights of the land owner to be reserved in case he would like to

contest the matter afresh.

19. For all practical purposes, Mr. Arora submits that the College in question has remained in existence for long number of years and it appears that

because of the inter se dispute between the shareholders, there was an assumption on the part of the original writ-petitioner that some part of the land

which was not acquired (acquired but returned) has also been included in the campus of the College. The issue could have been decided by referring

these matters to the authorities concerned but for some inexplicable reason, the issue of demarcation has travelled this far.

20. In deference to the decision made by the predecessor Division Bench that this issue could be decided in the writ petition, we have also entertained

these Appeals but in the absence of any assistance or rebuttal from the side of the respondents, we deem it appropriate now to give the entire dispute

a quietus, reserving the right of the respondents to re-agitate the matter afresh before the appropriate authority/forum. In that event, the

authority/forum would be perfectly within its rights to hear all the parties concerned and take an informed decision.

21. With the aforesaid observation/direction, these two Appeals are disposed off.

22. The order passed by the learned Single Judge asking the Principal, N.M.C.H. to pay a fine of Rs. 25,000/- from his pocket is, hereby, set-aside.