

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10568 of 1998

- =====
1. Vijay Kumar Sinha , son of late Ram Khelawan Prasad Sinha
 2. Anil Kumar, son of late Ram Khelawan Prasad Sinha, both Advocates Patna High Court, resident of Shivaji Road, Yarppur, P.S. Gardanibagh, Town and District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Jehanabad, District-Jehanabad
3. Circle Officer (Anchal Adhikari), Jehanabad, District Jehanabad.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Singh,

For the Respondent/s : Mrs. Kumari Amrita, GP-10

Mr. M.K. Upadhyay, AC to GP-10

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-03-2015

Heard the parties.

In the present writ petition, petitioner has claimed that respondent-authority has illegally disturb the peaceful civil life and demolished certain portion of house and boundary wall standing on the ancestral land of the petitioner and further prayer has been made for a direction to the respondent to pay exemplary compensation for partial demolition of the boundary wall and removal of certain portion of his house.

The dispute is with respect to Khata No.217, Plot No.993, area 13.5 decimals of land Mauja Erki Thana No. 346 at Jehanabad. The claim of the petitioner is that 13.5 decimals of land with some constructions was purchased by the grand father



of the petitioners from one Sidheshwar Lal, the owner of 17 decimals of land. Parties affected their title through registered sale deed, in due course, the name of the petitioners was mutated. On earlier occasion a proceeding vide Case No.29 of 1969-70 was initiated against the vendor of the petitioners which ended having not found encroachment, accordingly proceeding was dropped. Later on measurement case vide Measurement Case NO.8 of 1995-96 was initiated, there also did not find encroachment was affected.

The District Administration, in 1998, started a drive of removal of encroachment, in the drive certain portion of boundary wall including certain portion of main building was also demolished.

Learned counsel for the petitioner submits, respondent authority, has illegally demolished his structure which was standing on his Raiyati land and respondents should restore his building and boundary wall to its original place.

In the counter affidavit, contradictory statement has been made by the State, where it has been mentioned, petitioners have encroached the public land as structure was found standing on the public land, the same was demolished accordingly encroachment has been removed. In the counter affidavit it has been said, a full

fledged proceeding was initiated before removal of the structure and after hearing it was found that petitioners constructed the house and boundary wall over the public land.

It appears that proceeding was initiated against a dead person and it cannot be said to be a valid proceeding. So much so in utter dismay even after the direction of this Court vide orders dated 19.2.2015 and 11.3.2015 for production of original record, the authority concerned could not produce the original record of encroachment proceeding. In such view of the matter in absence of original record the whole claim of State falls on the ground and the action of the State cannot be justified. Learned counsel for the State is unable to justify the action in absence of original record though it has been mentioned in the counter affidavit.

In such view of the matter, this Court holds that there is no material on record to suggest that demolition has been made after due process of law and cannot be said to be legal rather the action of respondent without any proceeding is illegal. This Court could have directed for restoration of structure of the petitioners to its original shape, considering the claim that structure of the petitioners was standing on the public land in such view of the matter the respondent, if so desired, may initiate a proceeding, after giving notice to the petitioners and take



proper decision in the matter within a period of three months from the date of receipt/production of a copy of the this order. In failure to complete the entire process within the aforesaid period the respondent are directed to restore the main structure of building and boundary wall of the petitioners to the original place. It has been averred by the petitioners that they reside at Patna in such view of the matter the respondents are directed give notice to the petitioner at Jehanabad as well as Patna address.

With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

U			
---	--	--	--