

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6229 of 1998

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Ram Nath Singh son of Late Sri Baijnath Prasad Singh, resident of village
Nowkothi, Police Station Nowkothi, District Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
 2. Sub-Divisional Officer, Bakhari, Begusari
 3. C.O.(Anchaladkhikari) Bakhari-cum-Nowkothi, Begusarai
 4. Circle Inspector, Bakhari, Begusarai
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate
Ms.Vagisha Pragya, Advocate
Mr.Ravindra Kumar Rai, Advocate

For the Respondent/s : Mr. Rajiv Kumar Singh, GP 2

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 05-08-2015

Heard the parties.

2. The matter at issue is the alleged encroachment made by the petitioner over a piece of land bearing khata no. 1528, Khesra No. 2867, area 12 dhurs situate at village Nowkothi, Sub Division Bakhari in the district of Begusarai (hereinafter to be referred to as “the land in question”) and the consequential removal of the aforesaid encroachment and in the process, demolition of structure standing over the part of the land in question, in view of order (s) passed in Encroachment Case No. 3 of 1998-99 by the respondent Anchal Adhikari, Bakhari.

3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a declaration that the action of the respondent nos. 2 to 4 in demolishing the house/structure over a portion of land in question was illegal and without jurisdiction. He has further prayed that the damages be awarded against the respondent nos. 2 to 4 for their illegal and mala fide action in

demolishing the house of the petitioner over the land in question.

4. It is not in dispute that the land in question has been recorded as 'Gair Mazarua Aam' land in the cadastral survey khatian and all other revenue records.

5. Learned counsel appearing on behalf of the petitioner, by referring to the document as contained in Annexure-1, submits that the ex-landlord Babu Ayodhya Prasad Singh had brought Title Suit No. 9 of 1929 in the court of learned Munsif Ist, Begusarai for declaration of his title and recovery of possession over plot no. 2867, area 2 kathas, in which, according to him, his great grand father was the defendant no.2 and the aforesaid title suit was finally dismissed by judgment and decree dated 12th December, 1932. The case of the petitioner is that the aforesaid judgment and decree was affirmed in appeal (s). By referring to the orders as contained in Annexures-2 and 3 passed in Land Encroachment Case No. 6 of 1986-87, he further submits that the respondent Anchal Adhikari, Bakhari had started aforesaid land encroachment case with respect to different plots of land including plot no. 2867 and in that case father of the petitioner was also a party. It is contended by him that though the land of plot no. 2867 was included in the aforesaid encroachment proceeding but in view of the judgment and decree passed in the aforesaid Title Suit no order of removal of alleged encroachment was passed by the respondent Anchal Adhikari, yet according to him, on 05.07.1998 the respondent authorities came over the land in question and demolished his house standing over the same. According to the learned counsel for the petitioner, whole action of the respondents was illegal and arbitrary. Therefore, the petitioner is entitled to receive compensation for the damages caused to him. In support of his above contentions, he placed reliance on the judgments of this Court in the cases of

Smt.Rekha Singh Vs. State of Bihar [1992(2) PLJR 854] (paragraphs 8 and 12), Parmottam Prasad Singh Vs. State of Bihar [AIR 1999 Patna 166] and Smt.Uma Devi Sinha Vs. State of Bihar [(2001(2) PLJR 587].

6. Au-contraires, learned Government Pleader No.2, appearing on behalf of the respondents, by referring to the averments made in the counter affidavit filed on behalf of the respondents way back on 10th September, 1998 as also the averments made in the supplementary counter affidavit filed on behalf of the respondent no.3 on 10th July, 2015, has strongly contested the matter. According to the learned GP 2, admittedly land in question is recorded as 'Gair Mazarua Aam' land in all the revenue records including the cadastral survey khatian. At the time of cadastral survey proceeding, the ancestors of petitioner had not produced even a chit of paper showing their valid right and title over the land in question. He pointed out that in the judgment of Title Suit No. 9 of 1929 vide Annexure-1 it was noticed that land of Khesra No. 2867 was 'Gair Mazarua Aam' land. Even in the aforesaid title suit, the petitioner's ancestors had not produced any valid document in support of his claim of right and title over the lands in question rather it was held that the defendants' house stands on their own land. Furthermore, the aforesaid title suit was dismissed primarily on the ground of limitation and not on merits. It is further contended by him that in Encroachment Case No. 6 of 1986-87 though the land in question was also included but it was excluded from the proceeding for the time being by order dated 26.10.1992 in view of the judgment and decree passed by the Civil Court and the aforesaid encroachment case was not conclusively dropped and it was never held that the land in question is not a public land. By referring to the ordersheet of Encroachment Case No.



3 of 1998-99 (Annexure-A to the counter affidavit filed on behalf of the respondents on 10th September, 1998), it is next contended that in the light of the order/direction issued by this Court in a collateral proceeding, which was in the nature of Public Interest litigation, measurement of the land in question was taken and thereafter it was found that the petitioner has encroached upon the public land. Therefore, the aforesaid encroachment case No. 3 of 1988-99 was initiated by the respondent Circle Officer, Bakhari. Notice was issued to the petitioner under the provisions of the Bihar Public Land Encroachment Act, 1956, but the petitioner refused to accept the notice. Hence, the matter proceeded further and finally by order dated 30.06.1998 he was directed to remove the encroachment from the aforesaid public land. It is pleaded that in the aforesaid factual matrixes, action of the respondents in removing the encroachment made by the petitioner from the lands in question was bona fide and in accordance with law.

7. With respect to claim of compensation of the petitioner, it is submitted by the learned GP 2 that in the whole writ petition the petitioner has not disclosed the quantum of damages caused to him. According to him, in absence of any specific materials and pleadings made on behalf of the petitioner, the petitioner may be relegated to the Civil Court for grant of appropriate relief with respect to claim for compensation. In support of his contention, he also placed reliance on the judgments of this Court in the cases of **Bhola Sah Vs. The State of Bihar [AIR 2000 Patna 52]** (paragraphs 56, 57 and 59) and **Md. Zikrul Islam Vs. State of Bihar [2000(4) PLJR 790]** (paragraphs 9 and 14).

8. After having heard the parties and on consideration of the materials available on the record, this Court finds that so far as the



land in question is concerned, indisputably it has been recorded as 'Gair Mazarua Aam' land in all the revenue records including the cadastral survey khatian. It is true that ex-landlord Babu Ayodhya Prasad Singh had brought Title Suit No. 9 of 1929 in the court of learned Munsif, Ist Court, Begusarai for declaration of his title and recovery of possession over the plot No. 2867, area 2 kathas, but that suit was dismissed primarily being barred by limitation and not on merits. In the aforesaid civil suit also, the petitioner's ancestor had not produced any valid document in support of his right and title over the land in question. In fact, Civil Court had not conclusively declared the right and title of the petitioner's ancestor over the land in question rather it was held that the defendants' house stands on their own land and the suit was dismissed on technical ground of limitation. It is also equally true that Land Encroachment Case No. 6 of 1986-87 was initiated by the Anchal Adhikari, Bakhari with respect to different plots of land including plot no. 2867 in which a large number of persons including father of the petitioner were impleaded as parties, but on examination of the ordersheet as contained in Annexures 2 and 3, this Court finds that the land of plot no. 2867 was excluded only for the time being, as the judgment and decree (Annexure-1) was produced by the father of the petitioner, but it was never conclusively decided that the land in question is not a public land. So far as the encroachment Case No. 3 of 1998-99 is concerned, it is apparent that the Anchal Adhikari, Bakhari, being the competent authority, had started the aforesaid encroachment case, but the claim of the petitioner with respect to the land in question was not taken into consideration on the ground that the petitioner allegedly refused to accept the notice issued by the Anchal Adhikari. According to the petitioner, no such encroachment case was ever initiated by the respondent Anchal



Adhikari, Bakhari and the document as contained in Annexure-A to the counter affidavit is a forged and fabricated document. Admittedly, the ordersheet of Encroachment Case No. 3 of 1998-99 was brought on the record way back on 10th September, 1998 along with the counter affidavit filed on behalf of the respondents. The petitioner has not alleged mala fide against any particular Officer, so none of them has been impleaded as party respondent by his or her name. In such circumstances, this Court fails to comprehend as to why the then Anchal Adhikari, Bakhari, shall prepare a forged and fabricated ordersheet of Encroachment Case No. 3 of 1998-99. Hence, the submissions made by learned counsel for the petitioner on this score are rejected. This Court takes a judicial notice of the fact that at the relevant time a PIL filed on behalf of one Arun Kumar Mukherjee was pending before this Court, which was being monitored by a Division Bench of this Court and several orders and directions were issued to different District Collectors/authorities of the State to remove all encroachments from the public road/public land so that there was free flow of traffic. It appears that in the light of the aforesaid direction/order (s), the respondent Anchal Adhikari, Bakhari initiated and concluded the aforesaid Encroachment Case No. 3 of 1998-99 directing the petitioner to remove the encroachment from the public land, but the facts remain that reasonable opportunity of hearing was not given to the petitioner for placing his claim with respect to the land in question. In the aforesaid background of the case, this Court is of the opinion that the entire matters require re-consideration and a fresh decision.

9. For the reasons recorded above, the orders passed in aforesaid Encroachment Case No. 3 of 1998-99 is hereby set aside and quashed with a liberty to the competent authority under the

provisions of Bihar Public Land Encroachment Act, 1956 to start a fresh proceeding in accordance with law. If such a proceeding is started, the petitioner shall be obliged to produce all documents and papers in support of his claim over the land in question and the proceeding shall be taken to its logical conclusion.

10. So far as the claim of compensation for damages is concerned, this Court finds that the petitioner has not specifically brought on record the sufficient materials and has not made specific pleading regarding quantum of damages caused to him. The claims raised on behalf of the petitioner has strongly been disputed by the respondents in their counter affidavit. That being the factual position, this Court grant liberty to the petitioner to approach the civil court of competent jurisdiction for grant of appropriate relief regarding payment of compensation/damages, as that requires evidence/materials to be adduced by the parties and only thereafter quantum of damages, if any, can be assessed.

11. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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