

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6053 of 1998

=====

Dashrath Sharma @ Dashrath Prasad Mahto, son of late Hridaya Narayan Sharma,
resident of Village-Kahua, P.S. Sangrampur, District-Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Munger
2. The Collector, Munger
3. The Circle Officer, Sangrampur, District Munger
4. Raghunandan Kumar, son of late Tapeshwari Kumar
5. Harihar Sharma, son of late Mahendra Sharma
6. Umakant Sharma, son of Ganesh Sharma
7. Girja Sharma, son of Yamuna Sharma, all resident of Village Kahua, P.S. Sangrampur, District Munger.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dr. Krishna Nandan Singh, Sr. advocate.
Mr. Dr. Kamal Deo Sharma
Mr. Vishwa Narupadhay, Advocate.

For the Respondent/s : Mr. Siya Ram Shahi, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-05-2015

Heard the parties.

2. In the present writ petition petitioner is challenging the order dated 21.4.1998 passed by the Collector, Munger in Encroachment Appeal No.3 of 1989 by which he has affirmed order dated 25.7.1989 passed by the Circle Officer, Sangrampur, Munger in Encroachment Case No.1 of 1987-88.

3. The land in dispute with respect to the present case is appertaining to Khata No.77, Plot No.515, area 6.74 acres Village Kahua and Khata No.37, Plot No.148, area 0.76 acres village Bejham, Circle Sangrampur forms part of same parcel of

land.

4. A proceeding under Land Encroachment Act was initiated by the Circle Officer but it appears that some villagers have filed Title Suit vide T.S. No.55 of 1975 where the claim was made by the villagers that the land in question is Gair Majarua Am Land and over which building of School is standing. While deciding the title suit the trial court has framed issues particularly with respect to the land as to whether the suit land is Gair Majarua Am Land or not. The court after discussing the material on record arrived to a conclusion that the land is not Gair Majarua Land and thereby dismissed the suit.

5. The judgment and decree passed in the aforesaid title suit (Annexure-7) has been challenged before this Court vide First Appeal No.774 of 1993 which is pending for adjudication. So long the finding with regard to nature of land being not Gair Majarua Am Land the proceeding under Land Encroachment cannot be initiated, as it appears from the finding of the trial court that it is not a public land.

6. In such view of the matter, the order dated 25.7.1989 passed by the Circle Officer, Sangrampur, Munger as well as order dated 21.4.1998 affirmed by the Collector are not sustainable in law and the same are quashed but if the First

Appeal would be decided against the present petitioner, the State authority will be at liberty to act in accordance with law.

7. Accordingly this writ petition is allowed with the aforesaid observation.

(Shivaji Pandey, J)

Vinay/-

U			
---	--	--	--