

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2649 of 2015

=====

Karu Choudhary, son of Late Balo Pasi, resident of Mohalla- Jawaripur,
Tilkamanjhi, Police Station - Tilkamanjhi, District – Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Bhagalpur.
2. The Anchal Adhikari, Jagdishpur, District Bhagalpur.
3. The Officer - in - Charge, Tilkamanjhi Police Station, Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. S. M. Ashraf

For the Respondent/s : Mr. Ram Shankar Prasad, AC to GP-7

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-08-2015

Heard Mr. S.M. Ashraf, learned counsel appearing on
behalf of the petitioner and Mr. Ram Shankar Prasad, learned
Assisting Counsel to Government Pleader No.7 for the State.

The writ petition was filed praying for issuance of
appropriate direction in the nature of prohibition restraining the
respondents from evicting the petitioner and his family members
from their residential house situated on plot bearing khata no.100,
khesra nos.276 and 241 in Ward No.2, Jail Road, Jawaripur,
Tilkamanjhi in the district of Bhagalpur.

The writ petition was filed on 4.2.2015 and it is the
submission of Mr. Ashraf, learned counsel appearing for the
petitioner that the house has been demolished on 5.2.2015. It is the
contention of Mr. Ashraf that although the encroachment case
initiated for removal of encroachment allegedly caused by the



petitioner under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') giving rise to Encroachment Case No.18 of 1992-93 was in relation to plot nos.277 of khata no.100 and in which a notice of removal was issued on 16.2.2013, a copy of which is placed at Annexure-2 but subsequently a second notice was issued in respect of plot nos.276 and 241, a copy of which is placed at Annexure-C to the counter affidavit of the State but which notice was never received by the petitioner and whereunder the petitioner upon being charged of encroachment on plot nos.276 and 241, was directed to remove the encroachment. He submits that the encroachment has been removed and the house has been demolished but without initiating any proceeding in relation to plot nos.276 and 241. It is thus the contention of Mr. Ashraf that although the proceedings had indeed been initiated in respect of plot nos.277 but the encroachments were not removed in view of the pending title suit filed by the petitioner bearing Title Suit No.174 of 1993 which was decreed in his favour. He further submits that although the title appeal was also decreed in favour of the petitioner but the decree was upset in Second Appeal No.279 of 1999 by this Court which was allowed on 27.9.2013 vide judgment placed at Annexure-A to the counter affidavit and the Special Leave Petition of the petitioner was dismissed on 18.2.2014. It is stated that thereafter though the petitioner gathered



information that steps were being taken by the respondents for removing encroachment but without service of any notice that the demolitions have taken place. The petitioner complains of arbitrary action of the respondents in carrying out the demolition without notice and without drawing proceedings in so far as plot nos.276 and 241 are concerned.

The argument of Mr. Ashraf has been contested by the learned State Counsel who submits that even though initially the proceeding was initiated for plot no.277 but the fact remains that the construction made by the petitioner extended to plot nos.276 and 241, all of which were situated within the land acquired for the purpose of Medical College at Bhagalpur. It is submitted that it was in the process to evict the encroachers from the land of the Medical College that the proceedings were initiated and which was questioned by way of suit by the petitioner and in which the petitioner as a plaintiff had claimed title also over plot nos.276. With reference to the issues framed at paragraph 5 of the judgment of the second appellate court placed at Annexure-A to the counter affidavit he submits that the circumstances have been taken note of by this Court in paragraphs 8 and 11 of the judgment and have been answered in paragraph 16 in which it has been held that the land in question was acquired for the Medical College. It is stated that this Court while setting aside the decree passed by the courts below has



decided the issue in favour of the respondents upholding the stand of the State that the land in question so encroached by the petitioner was acquired for the Medical College. It is the contention of the State that in view of the decree of the second appellate court as affirmed by the Supreme Court when the Special Leave Petition of the petitioner was dismissed on 18.2.2014 it was for the petitioner to remove the encroachment and since orders have been passed by the Division Bench by this Court in matter arising from CWJC No.6684 of 2010 requiring the State to take appropriate measures for removal of encroachment from the land belonging to the Medical Colleges that the State has proceeded to remove the encroachment after notice to the petitioner, a copy of which is placed at Annexure- 'C' and which Mr. Ashraf claims, was not served on the petitioner.

Although in normal circumstances this was a case for remand since according to the petitioner, no opportunity was granted to him to present his case but in consideration of the matter in totality of the circumstances as reflecting from the judgment and decree of the second appellate Court passed in Second Appeal No.279 of 1999 placed at Annexure-A to the counter affidavit of the State which leaves no room for confusion that the plots occupied by the petitioner fell within the area acquired by the State for the Medical College at Bhagalpur and there being no dispute on

the issue that CWJC No.6684 of 2010 is a writ filed in the nature of a Public Interest Litigation for removal of encroachment from the land of the Medical College, in my opinion remand of the matter would not lead to any other result since in view of the finding of the second appellate court that the land occupied by the petitioner is within the land acquired for the Medical College at Bhagalpur and in view of the direction issued by the Division Bench in the public interest litigation the petitioner has no option but to vacate the land in question.

In the circumstances discussed, even though according to the petitioner, the demolitions have been carried out without due notice to him but in the extraordinary circumstances where the issues stand concluded that the land occupied by the petitioner belongs to the Medical College, and considering the order passed in the Public Interest Limitation arising from CWJC No.6684 of 2010 I am not persuaded to grant indulgence to the prayer made in the writ petition which is accordingly disposed of.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--