

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16189 of 2011

Belvendra Mishra S/o- Late Tarni Mishra, Resident of Vill. + P.O. + P.S.- Ghanshyampur, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Land and Reforms, Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Darbhanga.
4. The Sub-Divisional Officer, Biraul, District- Darbhanga.
5. The Circle Officer, Ghanshyampur Block, District- Darbhanga.
6. The Superintendent of Police, Darbhanga.
7. The Officer-in-Charge, P.S.- Ghanshayampur, Dist- Darbhanga.
8. Surj Kant Jha @ Bucchi Babu S/o- Late Ram Bullab Jha Resident of Vill. + P.O. + P.S.- Ghanshyampur, District- Darbhanga.

.... Respondents

with

Civil Writ Jurisdiction Case No. 12575 of 2014

Arun Kumar Mishra, Son of Mahendra Mishra, Resident of Village+ P.O.+ P.S.- Ghanshyampur, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Land and Reforms, Department, Government of Bihar, Patna.
3. The District Magistrate- cum- Collector, Darbhanga.
4. The Sub- Divisional Officer, Biraul, Darbhanga.
5. The Circle Officer, Ghanshyampur, Block, District- Darbhanga.
6. The Superintendent of Police, Darbhanga.
7. The Officer- incharge, Ghanshyampur, P.S., District- Darbhanga.
8. Smt. Devta Devi, Wife of Suryakant Jha @ Bucchi Babu
9. Prabhash Jha, Son of Suryakant Jha @ Bucchi Babu
10. Jyoti Jha, Son of Suryakant Jha @ Buchhi Babu Respondent no. 8 to 10 resident of Village- Ghanshyampur, P.S.- Ghanshyampur, District- Darbhanga.

.... Respondents

Appearance :

(In CWJC No. 16189 of 2011)

For the Petitioner : M/s. Sanjay Kumar and
Pankaj Kumar Jha, Advocates
For the State : Mr. Rajiv Kumar, A.C. to G.A.5
For the Private Respondent : M/s. Pramod Mishra and
Arun Kumar, Advocates

(In CWJC No. 12575 of 2014)

For the Petitioner : M/s. Sanjay Kumar and
Pankaj Kumar Jha, Advocates
For the State : Mr. Avinish Nandan Sinha, G.P.XI
For the Private Respondent : M/s. Pramod Mishra and
Arun Kumar, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 27-08-2015

Two writ petitions have been filed by different persons for removal of encroachment from the same land corresponding to Khesra No.1609 (old) and Khesra No.1889 (new) which according to the petitioners is the Aam Rasta.

Allegation made by the petitioners is that the private respondent nos.8 to 10 have encroached.

Counter affidavit has been filed on behalf of the State. It appears that during the pendency of this writ application, the matter has been decided by the Circle Officer. The order sheet has been appended as Annexure-D. It appears from the order dated 03.10.2012 that the land concerned has been found to be free from any encroachment.

However, learned counsel for the petitioners submits that it would be apparent from the order sheet that though they have made a complaint regarding encroachment but the order has been passed without granting any opportunity to the petitioners. Not only that, learned counsel points out that it would be apparent from Annexure-A



which is written by the concerned Revenue Officer addressed to the Circle Officer, Ghanshyampur that the area of the concerned land is 02 decimals according to the khatian and in Annexure-B admittedly only 04 ¼ dhur, i.e., equivalent to 01 decimal of land was found even then strangely it is stated that there is no encroachment without justifying as to where remaining 01 decimal land has gone out of the total area of 02 decimal of the concerned plot and on that report itself the order has been passed.

However, learned counsel appearing for the respondent nos.8 to 10 submits that it would be apparent from order dated 05.09.2012 as well as Annexure-B that the measurement was done in the presence of the parties.

I am unable to accept the proposition that neither Annexure-B nor the order dated 05.09.2012 discloses that the petitioners were present at the time of measurement. Measurement was done by the Anchal Amin in view of the order passed by the Anchal Adhikari. However, the order appears to have been passed only on the basis of the report which does not disclose at all as to what had happened to the remaining 50% out of the total area of the land concerned. A logical conclusion would be that someone must have encroached 01 decimal. There may be some other explanation also but that would be required to be considered by the concerned authority.

In above view of the matter, in my view, the final order passed by the Anchal Adhikari during pendency of C.W.J.C. No.16189 of 2011 is not sustainable. Accordingly, the same is quashed and the matter is remitted back to the Collector of the District who shall examine the matter himself and, after getting the land re-measured in the presence of the parties, should and take a final decision on its own merit and in accordance with law within a period of two months from the date of receipt/production of a copy of this order. The parties should appear on the date/dates fixed by the Collector otherwise he would be at liberty to proceed in the matter even in their absence.

Accordingly, both the writ petitions stand allowed.

(Dr. Ravi Ranjan, J)

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