

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1711 of 2014

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Bijay Singh @ Bijay Krishna Prasad Singh, S/O Late Ramjatan Singh,
resident of Village- Dayalpur, Police Station- Chandi, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Nalanda at Biharsharif.
3. The Circle Officer, Chandi, District- Nalanda.
4. The Halka Karamchari, Chandi Block, District- Nalanda.

.... Respondent/s

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With

Civil Writ Jurisdiction Case No.1851 of 2014

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Pappu Singh @ Rajesh Kumar, S/O Sri Ramashray Nirala, resident of
Village- Chandi, Police Station- Chandi, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Nalanda at Biharsharif.
3. The Circle Officer, Chandi, District- Nalanda.
4. The Halka Karamchari, Chandi Block, District- Nalanda.

.... Respondent/s

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With

Civil Writ Jurisdiction Case No.1485 of 2014

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Surya Mani Sharma @ Sippu Singh, son of Ramashray Nirala, resident of
Village - Chandi, P.S. Chandi, District – Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Nalanda.
3. The Circle Officer, Chandi, P.S. - Chandi, District – Nalanda.
4. Pappu Singh, son of Shri Ramashray Nirala, resident of Village-
Chandi, P.S.- Chandi, District – Nalanda.
5. Ramashray Nirala, son of Late Jamuna Singh, Resident of Village-
Chandi, P.S.- Chandi, District – Nalanda.

.... Respondent/s

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With

Civil Writ Jurisdiction Case No.2439 of 2014

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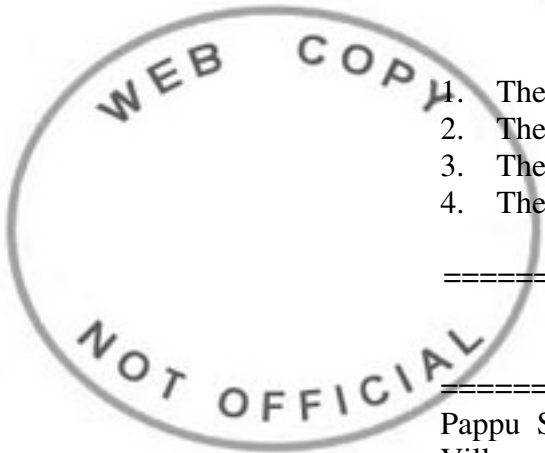
Krishna Prasad Singh, son of Late Rup Narayan Singh, resident of Village-
Chandi, P.S.- Chandi, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Nalanda at Biharsharif.
3. The Circle Officer, Chandi, District- Nalanda.
4. The Halka Karamchari, Block- Chandi, District- Nalanda.

.... Respondent/s



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With
Civil Writ Jurisdiction Case No.2440 of 2014

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Raja Ram Arya, son of Late Budhdeo Ram, resident of Village- Chandi,
Police Station- Chandi, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Nalanda at Biharsharif.
3. The Circle Officer, Chandi, District- Nalanda.
4. The Halka Karamchari, Chandi, Block, District- Nalanda.

.... Respondent/s

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Appearance :

(In CWJC No.1711 of 2014)

For the Petitioner/s : Mr. Indu Bhushan

For the Respondent/s : Mr. Siddharth Prasad, AC to AAG-4

(In CWJC No.1851 of 2014)

For the Petitioner/s : Mr. Indu Bhushan

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

(In CWJC No.1485 of 2014)

For the Petitioner/s : Mr. Dineshwar Prasad Singh

For the Respondent/s : Mr. Anshul, SC-32

(In CWJC No.2439 of 2014)

For the Petitioner/s : Mr. Indu Bhushan

For the Respondent/s : Mr. Md. N. Hoda Khan, SC-18

(In CWJC No.2440 of 2014)

For the Petitioner/s : Mr. Indu Bhushan

For the Respondent/s : Mr. Arvind Kumar-2, SC-17

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-08-2015

Heard the parties.

Since these five writ petitions are arising from the order passed in the same encroachment proceeding bearing Encroachment Case No.05 of 2013-14 that they have been heard together and are being disposed of at the stage of admission itself with the consent of the parties.

The writ petitioners have questioned their respective notice issued by the Circle, Officer, Chandi in the district of

Nalanda in a proceeding initiated under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') impugned in the respective writ petitions whereby the petitioners have been directed to remove their respective encroachments.

Although the proceedings were questioned by the petitioners on grounds that it was conducted in violation of the principles of natural justice and pursuant whereto the records of encroachment case were called for and have been produced by Mr. Siddharth Prasad, learned Assisting Counsel to Additional Advocate General No.4 but the assertions made are not found to be correct inasmuch as not only the notices have been served on the petitioners in the encroachment case rather they have also filed their respective show cause.

It is now to be seen whether the petitioners are to be relegated to the remedy of appeal as available to them under section 11 of 'the Act' or as contended by learned counsel whether the proceeding itself is not maintainable.

The records manifest that encroachment proceeding is in relation to a land bearing khata no.86, khesra no.2 admeasuring 55 decimals and land bearing khata no.86, khesra no.8 admeasuring 13 decimals situated in Mauza Gokhulpur, Thana no.296, Circle –Chandi in the district of Nalanda. The records of

the proceedings so produced by Mr. Prasad, learned Assisting Counsel to Additional Advocate General no.4 manifest that whereas 15 persons have been charged with the alleged encroachment over plot no.2 of khata no.86, five others have been charged with encroachment over plot no.8 of khata no.86.

According to Mr. Indu Bhushan and Dineshwar Prasad Singh, learned counsel appearing for the petitioners, the alleged encroachment by each of the petitioners is less than five decimals of land. In so far as the present petitioners are concerned whereas petitioner Bijay Singh has been charged with encroachment over 1122 sq.ft., petitioner Pappu Singh has been charged with encroachment of 5610 sq.ft, petitioner Surya Mani Sharma @ Sippu along with Pappu Singh is charged with the same encroachment, petitioner Krishna Prasad is charged with 975 sq. ft. and petitioner Raja Ram Arya has been charged with encroachment of 1428 sq. ft.

The records of the encroachment proceedings reveals a startling feature that the nature of land is *Gairmazarua Malik*. This Court had an occasion to come across the policy decision of the State Government in its Revenue Department dated 12.5.1971 on the issue of regularization of encroachment over *Gairmazarua Malik* land subject to the condition that the alleged encroachers were landless and were not having more than 2.5 acres of land in



so far as the people belonging to reserved category are concerned and 50 decimals for persons belonging to other category. The intention of the State as evinced from the policy decision dated 12.5.1971 would mean that if these persons are landless and the alleged encroachment is within the prescribed parameters the encroachment proceeding itself would be without sanction of law.

This Court had also an occasion to obtain the opinion of the Principal Secretary of the Land Reforms Department in an identical matter arising from CWJC No.1497 of 2015 (Uma Shankar Singh vs. The State of Bihar) which has since been allowed by the judgment and order passed on 6.8.2015 and in which the Principal Secretary has clearly stated that the policy decision in respect of *Gairmazarua Malik* land continues to operate and power has been vested in the Sub-Divisional Officer to take steps for regularization of such encroachment.

For the reasons so discussed hereinabove and in view of the policy decision dated 12.5.1971, it is manifest that the encroachment proceeding relating to *Gairmazarua Malik* land, the details of which are given hereinabove, is in the teeth of the policy decision and cannot be upheld and thus the entire proceedings arising from Encroachment Case No.05 of 2013-14 in so far as the petitioners are concerned, including the orders and notices issued thereunder cannot be upheld and are accordingly set aside.

The petitioners would appear before the Sub-Divisional Officer, Nalanda and file their respective application for settlement and which would be considered and disposed of by the Sub-Divisional Officer or the authority concerned on its own merits in accordance with law bearing in mind the policy decision dated 12.5.1971.

These writ petitions are allowed.

The records so produced by Mr. Siddharth Prasad, learned Assisting Counsel Additional Advocate General No.4 has been returned.

(Jyoti Saran, J)

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