

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7457 of 2016

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Vijay Yadav Son of Sri Ram Pukar Yadav, Resident of Village- Bampur, P.S.-
Chandi, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, Revenue Department, Govt. of Bihar, Patna.
3. District Magistrate, Nalanda.
4. Deputy Collector Land Reforms, Hilsa, Nalanda
5. Circle Officer, Nagarnausa, District- Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Prasad, Sr. Advocate,
M/s Ritesh Kumar and
Pramod Kumar, Advocates,
For the State : Mr. Shankar Kumar, AC to AAG 15

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 04-05-2016

Heard the parties.

Counter affidavit could not be filed by the State as per the direction contained in the order dated 27.04.2016. It is submitted that though learned counsel has received statement of fact but the same is still under preparation, however, the original record of Encroachment Case No. 03/15-16 has been produced for perusal of this Court.

It appears from the original record that Encroachment Case No. 03/15-16 was initiated for removal of encroachment from 0.25 acre of Gair Majarua Aam land(under Bhagwati Sthan) as



stands entered in the survey records with respect to Khesra No. 794 appertaining to Khata No. 99 of mouja Rampur, Thana No. 202. After inquiry, about six persons were found to be encroachers of the land. The petitioner was also found to be encroacher of 8 ft. of land from the southern side. On 29.07.2015 notices were issued upon the encroachers. Order dated 11.08.2015 discloses that the encroachers did not respond to such notices. Thereafter, final order was passed on 16.11.2015 directing the encroachers to remove encroachment from the aforesaid land. In the meantime, a writ petition was filed before this Court. Notices were again ordered to be served upon the encroachers on 11.01.2016. In the order dated 27.01.2016 it is stated that despite the notices none has removed the encroachment and the case was adjourned to 15.02.2016. In the order dated 15.02.2016/25.02.2016 it stands noted that on 30.01.2016 a Division Bench of this Court had directed for removal of encroachment from the said plot. Then on 07.04.2016 again, after noticing that the encroachment has not been removed, a direction was given to inform the encroachers that the same would be removed on 18.04.2016.

It appears that the matter was brought to the notice of a Division Bench of this Court by filing C.W.J.C. No. 18789 of 2015(Anil Kumar and others v. The State of Bihar and others). A



copy of the order dated 30.01.2016 passed by the Division Bench of this Court in the aforesaid writ petition is also on the record of the encroachment case. The Division Bench of this Court vide order dated 30.01.2016 had ordered for bringing the encroachment case to its logical conclusion in accordance with law expeditiously within a period of three months. The Circle Officer was directed to see that no encroachment takes place on the aforesaid land after removal of the encroachment. Thereafter, it appears that the aforesaid order was passed by the Circle Officer concerned as stated above.

This Court has permitted learned counsel for the petitioner to peruse the original records of the encroachment case produced today which have been perused by him during the course of hearing.

Mr. Rajendra Prasad, learned senior counsel appearing for the petitioner, submitted that obviously wrong description of the writ petition has been given in the impugned notice and, as such, the notice itself is defective and submitted that it is not clear as to whether the earlier notice was actually received by the petitioner or not, thus, he may be allowed to file a supplementary affidavit.

However, this Court would not be inclined to keep this matter pending in view of the clear-cut averment made in paragraph 5 of the writ petition, which is being extracted for better appreciation of this case:-

“5. That the petitioner has absolutely no concern or connection with plot no. 794 under khata no. 99, thana no. 202 village Bampur.

The petitioner got his land measuring 35 decimal under plot no. 786, Khata no. 58 in village-Bampur and he has constructed a house on the part of the said plot no. 786. The petitioner has not encroached by even as inch over plot no. 794.”

From the aforesaid statement made by the petitioner, it is clear that the petitioner is not claiming any right, title and interest over plot no. 794, which, according to the authority, is Gair Majarua Aam land(Bhagwati Sthan) as entered in the survey records. However, it is stated that the petitioner has constructed a house on the part of plot no. 786 as 35 decimal of land of plot no. 786 belongs to the petitioner.

Such being the categorical statement on the part of the petitioner, in my view, the probing whether any notice was served upon the petitioner is meaningless because there is no proceeding for removal of encroachment from plot no. 786 which belongs to the petitioner, rather the proceeding is with respect to the plot no. 794 upon which the petitioner does not claim any right, title or interest.

Now learned counsel for the petitioner submits that under the garb of the removal of encroachment from plot no. 794, the authorities would proceed to remove his construction standing on plot no. 786 also though nothing has been stated in the writ petition

as to why he is having such apprehension, however, this Court would be inclined to grant protection to the petitioner so that he may not suffer even under the garb of removal of such encroachment.

Accordingly, I direct the District Magistrate, Nalanda(respondent no. 3) to demarcate the land of plot no. 786 claimed by the petitioner and should ensure that any portion of plot no. 786, which is being claimed by the petitioner, is not touched or no construction is removed therefrom in the present proceeding. After demarcating the petitioner's land, the authorities will proceed to remove the encroachment from plot no. 794 as ordered by the Division Bench in C.W.J.C. No. 18789 of 2015(Anil Kumar and others v. The State of Bihar and others). The petitioner is directed to appear before the District Magistrate, Nalanda on 18.05.2016 along with a copy of this order and, thereafter, the District Magistrate would fix a date in the presence of the petitioner for measurement by the Anchal Amin and demarcation of the petitioner's land of plot no. 786 measuring 35 decimals. Thereafter, no part of construction over the demarcated plot no. 786 should be touched in the present proceeding. The authorities would be required to proceed expeditiously for removal of encroachment from plot no. 794 as ordered by the Division Bench of this Court in C.W.J.C. No. 18789 of 2015(Anil Kumar and others v. The State of Bihar and others).

The interim protection granted by this Court vide order dated 27.04.2016 shall continue till such measurement and demarcation is done.

Accordingly, this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.05.2016
Transmission Date	NA