

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5356 of 1997

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1. Ram Jeevan Prasad Singh
 2. Ashok Kumar
 3. Raj Kumar
 4. Arun Kumar
 5. Manoj Kumar
 6. Rajesh Kumar, all sons of late Bhuneshwar Pd. Yadav, alias Lala Prasad, resident of village- Prasad Bigha, P.S. Nawadah, District-Nawadah Petitioners

Versus

1. The State of Bihar
2. The Collector, Nawadah
3. The Superintendent of Police, Nawadah
4. The Additional Collector, Nawadah
5. The Sub-Divisional Officer, Nawadah
6. The Circle Officer, Nawadah Block, Nawadah
7. Executive Engineer, P.W.D. Road Construction Division, Nawadah

.... .. Respondents

with

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Miscellaneous Jurisdiction Case No. 3078 of 1996

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Raj Kumar son of late Bhuneshwar Pd. Yadav, alias Lala Prasad, resident of Mohalla- Prasad Bigha, P.S. Nawadah Town, District-Nawadah Petitioner

Versus

1. The State of Bihar
2. Sri S.K.G. Rahate, Collector and District Magistrate, Nawadah
3. Sri K.P.Singh, S.P., Nawadah, Dist. Nawadah
4. Sri R.D.Ram, Additional Collector, Nawadah, Distt. Nawadah
5. Sri Bishnu Kumar, S.D.O. Nawadah, Distt. Nawadah
6. Sri Suresh Paswan, Anchal Adhikari, Nawadah Block, District-Nawadah
7. Sri Parash Nath Singh, Officer-in-charge, Nawadah Town, P.S. District- Nawadah
8. Sri Mukesh Singh, S.I. Nawada P.S., District- Nawadah
9. Sri Sanjeev Singh, S.I. Nawadah P.S. District- Nawadah

.... .. Opp.Parties

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Appearance :

For the Petitioners	:	Mr. Alok Kumar Sinha No.1
For the State	:	Mr. D.K.Sinha, AAG-1 Mr. Alok Kumar Rahi, AC to AAG-1
For O.P. No. 2	:	Mr. Jitendra Singh, Senior Advocate Mr. Kamal Kishore Singh, Advocate Mr. Rajiv Kumar Singh, Advocate
For O.P. No. 6	:	Mr. B.K. Singh Chouhan, Advocate
For O.P.Nos. 3,7,8 & 9	:	Mr. Rana Vikram Singh, Advocate
For O.P. Nos. 4 and 5	:	Mr. S.K.Ghosh, Senior Advocate Mr. Giridhar Gopal Tiwari, Advocate Mr. Dharmendra Kumar

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

CAV JUDGMENT

Date: 10-08-2016

Heard learned counsels for the petitioners in the writ petition as also the petitioner in the contempt application, who is petitioner no. 3 in the writ petition, for the State and for the respondents in the writ petition and opposite parties in the contempt petition.

The writ petition and the contempt petition have been heard together and are being disposed of by this common order. For the sake of convenience and the background in which the contempt petition has arisen, it is deemed appropriate to take up the writ petition first.

CWJC No. 5356 of 1997:

The writ petition has been filed seeking several reliefs including holding of an enquiry by the State and taking appropriate action against its officials for demolishing the house of the petitioners and also to compensate the petitioners for the loss suffered due to highhandedness of such officials and also for quashing the order dated 9.12.1996 passed by the respondent-Collector, Nawadah in Appeal No. 11 (R) / 1996 so far as the same relates to encroachment over the land recorded in CS Plot No. 3247, Khata No. 856 and further for quashing the order dated 24.8.1996 passed by the Circle Officer, Nawadah in Encroachment



Case No. 5/1996-97 and also for quashing the order dated 11.04.1997 passed by the Circle Officer, Nawadah by which the original petitioner has been asked to deposit a sum of Rs. 22,949.95 as expenses incurred in demolishing the house as also for quashing the certificate proceedings in Certificate Case No. 9 of 1997-98.

The facts leading to the present writ petition are that in the Cadastral Survey Records of Rights a piece of land under Plot No. 3080 of Khata No. 609 had been recorded as Gairmajarua Aam in the nature of Pyne and similarly Plot No. 3247 of Khata No. 856 had been recorded Gairmajarua District Board in the nature of Khanta of road.

It is the stand of the petitioners that the nature of the land got changed on account of filling of Pyne and converted into agricultural and homestead land and the local people, having no accommodation, started residing in the said land after constructing dwelling houses, which included the ancestor of the original petitioner's husband, who had also being homeless, resided on the said land by constructing dwelling house over both the plots and the petitioners were coming in peaceful possession for many years. It is also alleged that the ex-landlord settled the same in the year 1941 in the name of the ancestor of the petitioners after taking Salami and since then the petitioners along with their family

members were continuing in peaceful possession after constructing dwelling houses. Similarly, the ex-landlord had settled the land of the said plot in favour of some other persons who were also coming in peaceful possession after constructing dwelling houses thereon.

It is the stand of the petitioners that the Hukumnama executed by the ex-landlord was never challenged by the respondent-State before in any forum. During the revisional survey a different Khata No. 1807 was carved out from two khatas being Khata Nos. 856 and 609 of the Cadastral Survey Record of Rights. The petitioners' two plots were amalgamated into Plot No. 668 and an area measuring 5.14 decimals was recorded in the name of the petitioners in the revisional survey. However, the land under Khata No. 856 plot No. 3247 was shown as Khanta of road and the petitioner being aggrieved by such wrong entry filed an appeal before the Survey Superintendent, Gaya making the Chairman, District Board, Nawadah as respondent. The Survey Superintendent by his order dated 18.4.1991 directed the Survey Officer to make necessary correction in the draft of Khata No. 1807 and accordingly 5.14 decimals of land of Plot No. 1807 of Khata No. 658 was recorded in the name of the petitioner. Much later the order dated 18.4.1991 of the Survey Superintendent was challenged on 18.7.1996 by the Executive Engineer, RCD (Road

Division), Nawadah in a review petition which was pending before the Survey Superintendent, Gaya at the time of filing of the writ petition.

The petitioner had brought a suit being T.S. No. 131 of 1986 in the Court of the Munsif, Nawadah for declaration of title and confirmation of possession over Plot No. 3080, Khata No. 609 of the cadastral survey in which different officials of the State were made parties and they also filed their written statement and suggested issues to be decided. By judgment and order dated 11.12.1987 the suit was decreed in favour of the petitioners by the Additional Munsif, Nawadah holding that the plaintiff had right, title, interest and possession over the suit land and permanent injunction was granted against the defendants restraining them from dispossessing from the title and possession of the suit land and confirmed the possession of the plaintiff over the same. Against the same the State preferred an appeal before the District and Sessions Judge, Nawadah being Title Appeal No. 10/1988 which was dismissed for default by order dated 10.5.1990 and the restoration petition also was dismissed by order dated 12.4.1991 by the District & Sessions Judge, Nawadah for non-filing of the processes for issuance of notice despite several opportunities granted to the appellants.

A proceeding under the Bihar Public Land Encroachment



Act being Encroachment Case No. 5/1996 was initiated against the petitioners by the Circle Officer, Nawadah in respect of the land measuring 4.00 decimals of Plot No. 3247, Khata No. 856 and Plot No. 3058 of Khata No. 609 respectively situated in Prasad Bigha, Nawadah. The original petitioner appeared and filed written reply in the said case and denied the allegation of making further construction after the issuance of notice under the encroachment case and further informed the Collector in writing that she had filed a writ petition being CWJC No. 6539/1996 for quashing the entire encroachment proceedings and notices thereunder. By an interim order dated 15.10.1996 the proceedings before the Circle Officer was stayed. However, in the meantime, the Circle Officer, Nawadah although aware of filing of the writ petition, took up the matter for final hearing and passed final order dated 24.8.1996 holding that the petitioner had encroached 4.00 decimals of land of Plot No. 3080, Khata No. 609 and Plot No. 3247 of Khata No. 856 mentioning that the two plots having amalgamated in the revisional survey to form a single plot without mentioning new plot and Khata and further without referring to the judgment and decree against the Government passed in Title Suit No. 131/1986. Against the said order dated 24.8.1996 the original petitioner filed an appeal before the Collector being Appeal No. 11(R) /1996 which was admitted on 30.9.1996. By order dated 3.12.1996



passed in CWJC No. 6539/1996, this Court partly allowed the writ petition quashing the order dated 24.8.1996 with respect to Plot No. 3080 and with regard to Plot No. 3247 it was observed that the petitioner shall pursue the matter before the appellate Court where she has already preferred appeal. Thereafter the District Magistrate, Nawadah, after hearing the parties, set aside the impugned order passed by the Circle Officer, Nawadah in respect of Plot No. 3080 but rejected the appeal with respect to Plot No. 3247 and directed the Circle Officer, Nawadah to remove the encroachment from the said land in accordance with law. After the order of the District Magistrate, notice dated 9.12.1996 itself was issued to the petitioner to remove the encroachment from the area of 2 decimals of Plot No. 3247, Khata No. 856 within a period of 24 hours otherwise the same would be removed by the administration at the expenses of the petitioner which notice was said to have been shown to the petitioner who after allegedly reading it over, refused to accept it. It is the stand of the petitioner that on 10.12.1996 itself the Collector, Nawadah and the Sub-Divisional Officer, Nawadah along with other officials accompanied by 50 police force came to the house of the petitioner and started removing household articles of the petitioner and demolished the house standing on both the plots and on 11.4.1997 the Circle Officer, Nawadah directed the petitioner to



deposit a sum of Rs. 22,949.95 as expenses for removing the encroachment whereas the stand of the respondents was that the removal of encroachment was not carried out on 10.12.1996 rather it was removed on 11.12.1996 and only with regard to CS Plot No. 3247 to the extent of 31 feet x 30 Feet equivalent to 930 sqft. and no portion of the construction made over CS Plot No. 3080 was even touched.

In view of the aforesaid conflicting stand of the petitioner this Court by order dated 11.11.1997 directed the District Judge, Nawadah to assign a Judicial Officer, not below the rank of Subordinate Judge to make an enquiry into the matter who shall hold a local inspection after notice to the petitioner and the Anchal Adhikari and if necessary have the measurements taken and will also look into the records which may be produced by the Anchal Adhikari and the petitioners in support of their respective cases. A report was directed to be submitted to this Court on the question whether any portion of the house of the petitioner was standing on Plot No. 3080 and it was forcibly demolished by the authorities in execution of the order for removal of encroachment from the plot no. 3247. After making a local inspection a report was submitted by the Additional District Judge, Nawadah on 16.3.1998 in which it was concluded that since there was only 4 1/2' x 29' standing on the spot and rest portion stands demolished, it appears that portion

of plot No. 3080 has also been demolished in execution of the order for removal of encroachment.

In the course of argument in the writ petition, learned counsel for the petitioners has confined his prayer for quashing of the order dated 9.12.1996 passed in the Encroachment Appeal as also the direction dated 11.4.1997 of the Circle Officer, Nawadah directing the petitioner to deposit Rs. 22,949.95 as expenses of demolition and also the certificate Case No. 9/1997-98.

In support of his stand learned counsel for the petitioners has relied upon certain facts and records which had not been brought to the notice of either this Court in the earlier writ petition or before the Circle Officer and the Collector which, according to the petitioner, goes to the root of the matter. The reference, in fact, is to an order of this Court dated 3.7.1997 passed in CWJC No. 1103/1984 (Urmila Devi Vs. The State of Bihar & Ors.). The said writ petition had been filed for quashing of the order of the DCLR dated 25.3.1993 by which it was held that the petitioner had made encroachment with respect to an area of 20' x 20' over plot No. 3247 Khata No. 856 situated by the side of Patna-Ranchi road in the district of Nawadah, and also for quashing the order passed in appeal by the Collector, Nawadah on 12.12.1983 dismissing the appeal filed by the petitioner against the order dated 25.3.1983. Reliance in the said case was made by the petitioner to Title Suit



No. 13 of 1962 filed by one Smt. Triloki Devi in which specific finding was recorded by the Civil Court that Plot No. 3247 was not PWD land and even in T.A. No. 87 of 1974/40 of 1966 preferred on behalf of the State of Bihar against the order of the Trial Court, same finding was reiterated holding that the PWD had no concern with the land. The stand of the State that the finding recorded by the Civil Court in the case of Smt. Triloki Devi was not applicable to Urmila Devi since she was not party in the said case, was rejected by this Court by the said order dated 3.7.1997 holding that for all practical purposes the findings recorded by the Civil Court that PWD had no concern with the Plot No. 3247 is final and since it did not belong to PWD, it was not open to the State-authorities to say that the petitioner of the said case had made encroachment over PWD land. It was further held that whether the petitioner was party in the above mentioned title suit for the purposes of suit or not, she can accordingly, take help from the judgment to the extent that the PWD had no concern with plot No. 3247 and for the said reasons the impugned order of the Deputy Collector, Land Reforms as well as that of the Collector were set aside and the writ application was allowed.

Learned counsel for the petitioners submits that on parity with the reasonings in the aforesaid order dated 3.7.1997 passed in Urmila Devi's case (supra), the petitioners would also be entitled

to the similar relief and for the said reason alone the impugned orders dated 9.12.1996 passed by the Collector, Nawadah and the order dated 24.8.1996 passed by the Circle Officer, Nawadah ought to be quashed.

Learned counsel for the State has sought to raise the same arguments as were raised in the case of Smt. Urmila Devi but it is evident that in view of the reasoning adopted by this Court in Smt. Urmila Devi's case by order dated 3.7.1997, the said submissions have to be rejected and the petitioners would be entitled to the similar order as was granted by order dated 3.7.1997 of this Court.

For the aforesaid reasons, following the order of this Court dated 3.7.1997 passed in CWJC No. 1103/1984, the present writ petition is also allowed and the impugned order dated 9.12.1996 and the order dated 24.8.1996 passed by the Collector, Nawadah and the Circle Officer, Nawadah respectively are both quashed. The consequential order dated 11.4.1997 passed by the Circle Officer directing the petitioner to deposit Rs. 22,949.95 as expenses for demolition of the house is also quashed and so also the Certificate Case No. 9/1997-98.

MJC No. 3078 of 1996:

By order dated 12.08.2009 this Court had initiated contempt proceedings against opposite party Nos. 1 to 9, the



officials of the State Government. The contempt proceedings were initiated mainly on the basis of the enquiry report dated 16.3.1998 submitted by the Additional District Judge, Nawadah on the direction of this Court by order dated 11.11.1997 passed in CWJC No. 5356 of 1997. According to learned Additional District Judge, Nawdah the demolition was carried out in at least 4 decimals of the constructed area whereas, according to him, the case of the State-officials was that the area of Plot No. 3247 was only 2 decimals and therefore he came to the conclusion that the demolition has been carried out by the State-officials over at least 2 decimals of Plot No. 3080.

Learned counsel for the petitioners has sought to rely upon the report dated 16.3.1998 of the Additional District Judge, Nawadah to show that extensive demolition to the extent of 4 Decimals had been carried out which could not have been confined to Plot No. 3247 which was only 2 decimals and therefore the Additional District Judge has rightly come to the conclusion that demolition of at least 2 decimals had been made over plot No. 3080.

On the other hand, the opposite parties have denied all the allegations of disobedience of the order of this Court and it is their clear stand that the demolition was carried out entirely on the basis of the order passed in appeal by the Collector, Nawadah. It



is submitted that even before the order was passed by the Circle Officer on 23/24.8.1996 in the encroachment case, a measurement was directed to be made by the Anchal Amin, who made the said measurement on 10.7.1996 and gave his report which was duly taken into consideration by the Circle Officer in passing the order. It is stated that on 10.7.1996 the Anchal Amin in presence of the Junior Engineer and Amin, Road Construction Department took measurement and found 31' x 30' = 2 decimals of CS Plot No. 3247 and 4' x 30' = ¼ decimals in CS Plot No. 3080 on which the Pacca house was constructed by the original petitioner. It is submitted that the removal of encroachment has been made in accordance with the direction of the Collector in his appellate order only on Plot No. 3247 and not on Plot No. 3080.

It is further submitted that even from the case of the petitioner, it is evident that there were several occupants of Plot Nos. 3247 and 3080 and proceedings had been initiated against all of them, one of the said encroachers was one Paras Nath Singh against whom encroachment case No. 12/1996-97 was initiated on 7.11.1996 for having encroached 150 square links in Plot No. 3080 and 2 ½ decimals in Plot No. 3247 and by order dated 4.12.1996 the said Paras Nath Singh was directed to remove the encroachment over the said area failing which it would be removed at his expenses by the administration. Thereafter on



10.12.1996 the Halka Karamchari reported that Paras Nath Singh had removed the encroachment within the time granted. It is submitted that said fact has not been controverted by the petitioner in her reply to the show cause of opposite party no.6. It is urged that the land of said Paras Nath Singh was contiguous to land of the petitioner and he had also made encroachment contiguous to the encroachment made by the petitioner and it was for the said reason that the Additional District Judge noted the extensive removal of encroachment at the spot which broadly matches the encroachment of the petitioner and the encroachment removed by said Paras Nath Singh. Thus, there has been no removal of encroachment beyond the order passed by the Collector, Nawadah in his appellate order and the said order being in accordance with the direction of this Court dated 3.12.1996, there is no contempt of the order of this Court.

It is also the clear stand of the opposite parties that no removal of encroachment was carried out on 9.12.1996 and 10.12.1996 as has been falsely alleged by the petitioner rather it is clear from the sequence of events including the letter dated 11.12.1996 of the Sub-divisional Officer, Nawadah to the District Magistrate for deputation of forces for demolition that the demolition has been carried out on 11.12.1996.

It is further submitted by learned counsel that the



measurement has not been carried out by learned Additional District Judge in a scientific manner as clearly stated by him in his report that he could not get assistance of any survey knowing Pleader Commissioner despite direction to them and writing about the same to the District & Sessions Judge, Nawadah. It is further submitted that even the petitioner did not come on the date of inspection along with his Aamin. It is thus, contended that it is not open to the petitioners to rely upon the report of the Additional District Judge, Nawadah who has given his report on the very presumption that the measurement of the encroached area removed works out to 4 decimals whereas the area of plot no. 3247 was only 2 decimals and thus there has been demolition from plot no. 3080 also without looking into the actual situation of plot no. 3080. It is submitted that in the course of inspection there was no occasion to inform the Additional District Judge about contiguous demolition carried out at the land of Paras Nath Singh and therefore, he has not considered the said aspect of the matter while giving his report.

It is thus submitted by learned counsel that contempt being a grave matter which being quasi criminal in nature and which has to be proved beyond all reasonable doubt and not merely on the basis of presumption or surmises or technical faults, which is all that can be concluded from the report of learned

Additional District Judge which is the sheet anchor of the case of the petitioner.

Learned counsel for the opposite party nos. 3, 7, 8 and 9 has also further stated that there is no specific allegation against them and only a general allegation was made with respect to which it is contended that they had no knowledge of the order nor the S.P. was present at the site and the demolition work was made by the local administration and officials of RCD. The force was deputed to maintain law and order and not to take part in any encroachment removal work. The opposite parties had neither any role to play nor acted contrary to the order of the High Court.

Learned counsel for the opposite party Nos. 4 and 5 besides adopting the submissions of learned counsel for Opposite Party No.2, has also taken the plea that being Additional Collector and S.D.O., Nawadah, at the relevant time they were not directly concerned with the removal of encroachment and the allegation made by the petitioner is not supported by factual or documentary material.

I have considered the submissions made by learned counsels for the parties and the materials on the record. So far as the petitioner is concerned he has not brought any independent material to show that there has been willful violation of the orders of this Court when the removal of encroachment was carried out



on the basis of the order dated 9.12.1996 passed by the District Magistrate, Nawadah. In respect of the order, no illegality has been pointed out. So far as the execution of the same on the relevant date is concerned, the setting aside of the order will not go against the legality of the order and would not make the said order illegal on the date it was passed and on the basis of which the removal of encroachment was made. As a matter of fact, the ground on which the order dated 9.12.1996 has been set aside by this Court by this order was not even raised by the petitioners at any time earlier either before this Court or before the D.M. and much later the said plea has been taken subsequent to the filing of the above writ petition. In the said circumstances, all that has to be seen is as to whether the removal of encroachment was in accordance with the order dated 9.12.1996 of the District Magistrate, Nawadah or any portion of plot no. 3080 has also been removed contrary to the direction of this Court.

The report of the Additional District Judge, Nawadah shows the clear non-cooperation of the petitioner in the matter. As a matter of fact, the petitioner did not even deposit the cost of inspection of Rs. 1500/- which he had been directed by the order of this Court nor did the petitioner come forward with Amin on the date on which the inspection was made by taking a lame excuse which cannot be accepted as it was for the petitioner to show that

the demolition was also carried on the land pertaining to plot No. 3080 which he clearly failed to show to the learned Additional District Judge. The learned Additional District Judge did not have assistance of any Survey Knowing Pleader Commissioner as no such Pleader Commissioner came forward to assist him in the matter.

Looked at in its entirety, the report merely says that the demolition had been carried on an area of approximately 4 decimals out of which the plot No. 3247 belonging to the petitioner was only to the extent of 2 decimals. Thus, it was presumed in the said report that the further demolition of 2 decimals had been carried out in plot no. 3080. The said finding is based on presumption and without considering fact that Plot No. 3247 was a larger plot in which there were several other persons and there was no finding recorded whether removal of encroachment further carried on was on plot no. 3247 or not and a mere presumption has been made that demolition over plot No. 3080 has also been done in violation of the orders of this Court.

The opposite parties have come up with clear explanation alongwith the order sheet of Encroachment Case No. 12/1996-97 initiated against one Shri Paras Nath Singh which shows that he was directed to remove the encroachment over more than 2 ½ decimals of plot no. 3247 apart from 150 sq ft of plot No. 3080.



There is nothing in the report of the learned Additional District Judge to indicate that he had found separately further removal of encroachment anywhere near the said point and it remains a moot point as to whether the further removal of encroachment over wide area was pursuant to the direction of removal of encroachment by Paras Nath Singh as stated in the show cause filed by opposite party No. 6 in which the order sheet of Encroachment Case No. 12/1996-97 is also enclosed. Thus there is sufficient probability in the specific stand of the opposite parties that such extensive removal was on account of removal of encroachment of plot of Paras Nath Singh by himself contiguous to the plot of the petitioners over the same plot Nos. 3247 and 3080.

This Court is conscious of the fact that the contempt proceedings being quasi criminal in nature needs to be proved beyond all reasonable doubt. It is evident from the materials on the record that the petitioner has failed to prove the same and the report of the Additional District Judge, in the light of the explanation put forward by the opposite parties, does not stand to scrutiny with regard to conclusion regarding demolition or removal of encroachment over plot no. 3080 of the petitioner as given therein.

Thus, for the aforesaid reasons, this Court finds that the charge of willful disobedience of the order dated 3.2.1996 of this

Court is not proved against the opposite parties.

The contempt proceedings are accordingly dropped.

(Ramesh Kumar Datta, J)

Later on

Mr. Giridhar Gopal Tiwary, learned counsel for opposite party No. 4 submits that the Opposite Party No.4, R.D.Ram, the then Additional Collector, Nawadah has died during the pendency of the proceedings.

Since the proceedings have been dropped, hence, no further order is required to be passed. His name shall be treated as deleted from the array of opposite parties/alleged contemnners.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
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