

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13390 of 2013

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1. (a) Shiv Balak Thakur
(b) Madan Thakur
(c) Ramadhar Thakur
(d) Lal Babu Sharma, all sons of Late Raghubir Thakur
(e) Rekha Devi daughter of Late Raghubir Thakur
(f) Mostt. Lalita Devi daughter of Late Raghubir Thakur
(g) Mostt Sushila Devi wife of Late Raghubir Thakur, all resident of village Tetariya, P.S. Rajpur, District East Champaran
2. Sudhir Thakur @ Vakil Thakur S/O Raghubir Thakur Resident Of Mauza - Tetaria, P.O. - Tetaria, P.S. - Rajpur, District - East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar through the Collector, East Champaran at Motihari
2. The Superintendent of Police, East Champaran at Motihari
3. The Block Development Officer, Tetaria Block, East Champaran, Motihari
4. The Circle Officer, Tetaria Block, East Champaran, Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Counsel
Mr. Rakesh Chandra
Mr. RANJAN KUMAR DUBEY
Mr Parth Gaurav
For the State Mr. Sunil Kr. Karn

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 04-05-2016

I. A. No. 1083 of 2014 is filed to delete the name of petitioner no.2 and substitute him by his heirs as mentioned in paragraph 2 of the said application. It is stated that Vakalatnama has been filed.

Having heard the parties, the interlocutory application is allowed. Let the name of petitioner be removed from the array of the party and his heirs as set out in paragraph 2 thereof be incorporated as the co-petitioners.

Heard the counsel for the petitioners as well as the counsel for the State.

A counter affidavit is filed on behalf of respondent nos. 1 and 4.

The writ application prays for a mandamus commanding the respondents to restore possession of the petitioners over the subject land and also for a direction to pay the compensation amount for the damages suffered by them on account of arbitrary/illegal removal/demolition of the residential structure of the petitioners over the subject land.

The dispute pertains to 07 decimals of land appertaining to khata no. 2, plot no. 655 situated in village Tetari within Rajpur police station in the district of East Champaran, Motihari. According to the petitioners, the said plot is a vast plot of land which was recorded as Bakast Malik Shivhar Estate. By way of Sada Patta, the ex landlord settled the subject land in favour of the petitioners. It is further the case of the petitioners that part of the land under khata no.2 was in possession of Rajkiya Kanya Prathamik Vidyalaya. The Vidyalaya tried to encroach over the land of the petitioners. In the circumstances, a writ petition being CWJC No. 11410 of 2011 was filed which was disposed of on 30.02.2012 (Annexure-3) observing that the Circle Officer, Tetaria shall make appropriate measurement of the school's land in presence of the party and thereafter steps for removal of encroachment shall be taken. In the meanwhile, the possession of the petitioners shall not be disturbed. It is relevant to notice here that the school administration also filed a writ petition vide CWJC No. 6456 of 2006 raising a grievance that the land of the school was encroached by the several persons and in spite of the efforts taken the same was not being removed. A Bench of this Court, vide order dated 05.04.2011 (Annexure-2), disposed of the said case observing that the Secretary of the school shall request the District Magistrate for removal of such encroachment. The petitioner was also asked to appear before the Circle Officer who would get the land of the school measured and if it is



found that the land of the school has been encroached by any unauthorized person by raising a hut or otherwise, the Circle Officer shall ensure removal of encroachment within a time frame. What in consequence thereof happened is not known to this Court. However, it does appear from the pleadings on record as well as the submissions of the counsel for the petitioners that a title suit being T.S. No. 164 of 2013 is filed by petitioner no.2 in the court of Sub Judge-I, Motihari seeking a declaration of right, title and possession over the subject land. In respect of the part of the subject land recovery of possession was sought whereas in respect of another part of the subject land a declaration of confirmation of possession was sought. An application for injunction was filed therein to which a rejoinder was filed by the State. The case was fixed under orders of the court for consideration on the next date. In the meanwhile, the respondent, it is alleged, arbitrarily removed the dwelling structure of the petitioners over the subject land and hence the writ petition.

In the counter affidavit, the respondents have disputed the right, title and possession of the petitioners over the subject land. Paragraph 7 of the counter affidavit details the case of the State respondent(s).

On a consideration of submissions of the parties and after perusal of the materials on record, it appears that two orders of this Court have been passed in respect of subject land. One, at the instance of petitioner no.2 (Annexure-3) and another at the instance of the Secretary, Gram Siksha Samiti (Annexure-2). Removal of encroachment was ordered in both the cases. In the case of petitioner no.2 it was directed that an encroachment proceeding should be initiated in which the petitioner should be heard and thereafter an order be passed. In the case of school administration (Annexure-2), the Court directed the Circle Officer to get the land measured and if encroachment was found thereover by any one

the same was to be removed. In such circumstances, the Court will not appraise the claim of either party.

There is another reason for not doing so. Unquestionably, a suit is pending at the instance of the petitioners in respect of the subject land in which the State respondent(s), as has been given to understand, have already appeared. The petitioner filed an application under Order 39, Rules 1 and 2 CPC in the said proceeding which appears to be pending. The claim of the party can be appreciated with reference to the evidence/material brought before the court. In the circumstances, this Court refrains from granting relief to the petitioners. The petitioners shall be at liberty to raise all relevant issue(s) in the pending suit for consideration and disposal in accordance with law.

The application stands disposed of.

(Kishore Kumar Mandal, J)

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