

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3801 of 2016

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The Safety And Security Association of Permanent Residents of Mohalla - Dusadhi Pakari, P.S. Kankarbagh, District - Patna, through its General Secretary Aradhana Devi wife of Late Mithilesh Paswan, son of Late Sakaldeep Paswan whose name appears at Sl. No. 14 of Notice dated 9.7.15 issued in Encroachment Case No. 04/7 of 15-16 by the Anchal Adhikari, Phulwarisharif, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat Building, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Old Secretariat Building, Patna.
3. The Collector-cum-District Magistrate, Patna, North of Gandhi Maidan, Patna-1.
4. The Deputy Collector, Revenue (D.C.L.R.), Patna Collectorate, Patna.
5. The Circle Officer, Phulwari Anchal, Patna.
6. The Senior Superintendent of Police, North Gandhi Maidan, Patna.
7. The Deputy Superintendent of Police, Sadar Police Sub-Division, Patna.
8. The Officer-in-charge, Kankarbagh Police Station, Patna.
9. Suresh Yadav, son of Late Ganauri Yadav Resident of Mohalla - Karbigahiya, P.S. Jakanpur, District - Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dharendra Kumar Gupta, Advocate
For the State : Mr. Shiv Kumar, AC to GA7

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 06-04-2016

Heard learned counsel for the petitioner and the State.

Petitioner claims to be an association of persons described in paragraph 7 of the writ application who according to the petitioner are judicious and are peaceful possession of the plots concerned since more than hundred years but some of them have been thrown out and some are at the brink of being thrown out by the

statutory authorities in Encroachment Case No. 04/7 of 15 – 16.

It appears from Annexure 1 that a notice was issued in the aforesaid case upon 15 persons who have been shown as members of the petitioner's association to appear before the authority and explained their stand regarding encroachment on 0.40 acre of land of khesra no. 270 of Mauza Dusadhi Pakari. Thereafter, again a notice appears to have been issued upon them vide Annexure 2 noticing that they have neither removed the encroachment from Gair Mazarua Aam land nor have they produced any paper or document in support of their claim, therefore, they were directed to remove the encroachment otherwise the same would be removed with the help of District administration as they have been found to be encroachers of Gair Mazarua Aam land and further that action would be taken against them under Section 188 of Cr.P.C. also.

Learned counsel for the petitioner has vehemently argued that the members of the association are residing over 0.40 acre of land of plot no. 270 since last more than hundred years generation to generation and as such they cannot be thrown away in such type of a summary proceeding. He has placed reliance upon several decisions. One of such decisions being **M/s. Chandra & Co. v. State [A.I.R. 1981 Raj. 217]**.

Per contra learned counsel appearing for the State



has submitted that though the petitioner claims to be an association, it has not stated anywhere in the writ application as to when was this association formed by fifteen persons and who are the office bearers of the association save and except the so called General Secretary Aradhana Devi who has been described in the writ application. That apart, it is also urged that the same judgment of Rajasthan High Court of **M/s. Chandra & Co. (supra)**, which has been relied upon by the petitioner, discloses in paragraph no. 14 in clear terms that person who has bonafide possession of the property can be dispossessed only in accordance with law. In the present case the fifteen persons have not even found bonafide persons rather they have been declared encroachers.

Now to appreciate the rival contention this Court would have to look into the pleadings as well as the documents which has been produced by the petitioner. Petitioner in support of its submission has appended Annexure 3 along with a typed copy which itself shows that plot no. 270 of an area of 0.40 acre land is Gair Mazarua Aam Rasta. So far Annexure 4 is concerned this is with respect to plot nos. 267 and 268 which are not involved in the present proceeding. Apart from above, nothing has been brought on record to show that the members of petitioner association have any legal right or they have been in possession for hundred years etc. That

apart, if the members of the petitioner association have been at the verge of being thrown out they could have approached personally before the competent forum available against the order passed under the Public Land Encroachment Act. Since none has approached this Court personally and the association has not produce any document showing its legal right on the land concerned which is admittedly a Gair Majarua Aam land, in such a situation this Court does not have any option than to hold that the petitioner has not been able to show that its members were bonafide in possession and have any legal right. As a result this writ application fails and is, accordingly, dismissed.

However, since it is not known to the Court, as there is no such document appended with the writ petition to establish that 15 persons have formed the association or not, thus, this Court would not take away individual right of the aggrieved persons to assail the orders passed under the concerned Public Land Encroachment Act before a competent forum, if they so desire.

(Dr. Ravi Ranjan, J)

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