

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.81 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 13694 of 2014

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Kusum Gope, S/o Faujdar Gope, Resident of Village Rampatti Tole, Sri Ganj, P.S.
Raj Naar, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Revenue Department, Government of Bihar, Patna.
2. The Secretary, Land Reforms, Government of Bihar, Patna.
3. The Collector, Madhubani.
4. The Deputy Collector, Land Reforms, Sadar, Madhubani, District Madhubani.
5. The Circle Officer, Raj Nagar, District Madhubani.
6. The Anchal Amin, Raj Nagar, District Madhubani.
7. Ram Babu Yadav, S/o Si Baldeo Yadav, Resident of Village + P.O. Rampatti, Tole Sri Ganj, P.S. + Circle Raj Nagar, District Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Malika Majumdar, Advocate Mr. Ratnakar Singh, Advocate
For the Respondent/s	:	Mrs. Nutan Sahay, A.C. to A.A.G.12 Mr. Subhash Jha, Advocate Mr. Sankar Thakur, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 16-12-2016

The present petition is for review of the order dated 23rd of March, 2015 passed in C.W.J.C. No. 13694 of 2014 whereby, the writ application filed by Respondent No. 7 was disposed of in view of the counter affidavit filed by Respondent Nos. 4 and 5 that encroachment not only by the writ applicant but also by Respondent Nos. 7 and 8 stands removed.



2. The stand of the present petitioner is that the petitioner is in possession of the land and that the petitioner has not been removed from possession and that there is no document to that effect.

3. We find that there are factual errors in the order dated 23rd of March, 2015. In the first counter affidavit filed on 12th of March, 2015 by Respondent Nos. 3 to 5 it was said to the following effect:-

“8. That with respect to para 9 of the writ petition it is stated that Shatrughan Yadav s/o Kusum Gope @ Kusum Yadav filed his show cause stating mentioning therein that an area of 2k 10 dhur was settled to Kusum Gope by the Ex land lord and Jamabandi no. 07 has been created in his name. He is paying the rent under Jamabandi no. 7 and is getting the rent receipt. Further in support of his claim he submitted information dated 17.03.2001 issued on the basis of register II. It is pertinent to mention here that one Satyadeo Yadav s/o Kusum Yadav R/o vill. Rampatti Anchal Rajnagar filed petition before the L.R.D.C. Madhubani stating therein that out of khata no. 429 Khesra no. 692 an area 2 katha 10 dhus has already been mutated in the name of his father Kusum yadav @ Kusum Gop. In his support thereof he has submitted Govt. revenue receipt, order of revisional survey authority in respect of aforesaid land, photocopy of information/chircut and he prayed for the stay of the encroachment proceeding.

11. That, the averment made in para no. 12 of the writ petition is distorted version of facts. It is reiterated that the descendants of said Kusum Gop are claiming 2K 10Dhur of land on the basis of Jamabandi. However, it appears that they have also encroached 2 K 1 Dhur of land which may be removed but,



only after cancellation of Jamabandi. Moreover the other portion of land is a pathway and free from any encroachment.”

4. However, in the supplementary counter affidavit filed on 17th of March, 2015 filed by Respondent Nos. 4 and 5 it was stated to the following effect :-

“5. That it is submitted that in compliance of the said orders the respondents have enquired into the matter thoroughly and found that there is encroachment on the land in question and such encroachment has not only done by the private respondent but the petitioner also. Further it came to light that some proceeding with regard to land in question is pending for adjudication. These facts have been brought on record by the answering respondents by filing earlier counter affidavit. However, in view of clear cut direction of this Hon’ble court to remove the encroachment on the land in question, the respondent No. 4 & 5 visited the spot on 16.3.15 and get the encroachment removed from the land in question and prepared a report to the said effect and sent the same to the District Magistrate.”

5. The report for removal of encroachment is in fact Annexure-I. The report is that there is encroachment on land measuring 2 Katha 10 Dhur situated in Khata No. 429, Khesra No. 692 which has been removed but not that the petitioner has been removed from the land in question. There is no assertion that possession has been taken from the writ applicant or the present petitioner.

6. Therefore, the 2nd paragraph of the order dated 23rd



of March, 2015 passed in C.W.J.C. No. 13694 of 2014 is ordered to be substituted in the following manner:

Original Para	Substituted para
On behalf of the respondents 4 and 5, a counter affidavit is filed admitting that not only the respondents 7 and 8, but the petitioner have also encroached the public Rasta. A supplementary affidavit is also filed on 17.03.2015 stating that all the encroachments, including those made by the respondents 7 and 8 and the petitioner have been removed. The report in relation thereto is filed as Annexure-I.	A counter affidavit dated 17 th of March, 2015 on behalf of Respondent Nos. 4 and 5 has been filed that encroachment has been removed. The said report is Annexure-I.

7. The Review Application stands disposed of accordingly with liberty to the aggrieved persons to avail such other remedy as may be available to them in accordance with law.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21.12.2016
Transmission Date	

