

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6798 of 2014

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Bishanudeo Bhagat, Son Of Late Bhatan Bhagat @ Matar Bhagat, Resident Of
Village- Dhane Goraul, P.S.- Goraul, District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Secretariat, Patna
2. The Collector, Vaishali at Hajipur Collectorate.
3. The Additional Collector, Vaishali at Hajipur Collectorate.
4. The DCLR, Mahua, Vaishali
5. The Circle Officer, Goraul, Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamlesh Kumar

For the Respondent/s : Mr. Pankaj Maijorwar, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 21-07-2016

Heard the parties.

By an order dated 19.07.2016, the learned counsel appearing on behalf of the petitioner was permitted to confine his prayer only with respect to Encroachment Case No.56 of 2013-14 initiated by the District Collector, Vaishali.

The petitioner has filed the present writ petition for quashing the entire proceeding of the aforesaid Encroachment Case No.56 of 2013-14 initiated by the District Collector, Vaishali.

The learned counsel appearing on behalf of the petitioner submits that earlier Land Encroachment Case No.1 of 2010-11 was started by the Anchal Adhikari, Goraul on the petition filed by one Surendra Prasad Chaurasia and several other villagers with respect to the parcels of lands bearing Khesra No.996, 997 and 998 total area being 82 decimals. It is further contended that in that case final order



was passed on 22.12.2010 by the Anchal Adhikari, Goraul wherein altogether 8 persons including the petitioner were found to be in possession over the lands in question, but, on examination of the records, it was found that the petitioner and two other persons were having settlement over some part of the lands in question. Therefore, no direction was issued for removal of alleged encroachment made by the petitioner. However, other persons were directed to remove encroachment over the lands in question. It is next contended that against that order no appeal was filed; therefore, that became final. Hence, the impugned proceeding started by the District Collector, Vaishali is wholly illegal and is fit to be quashed and set aside by this Court.

Though, in the present case, no counter affidavit has been filed on behalf of the respondents, yet the learned AC to SC-9 appearing on behalf of the respondents, by referring to the documents available on the record, submits that in fact aforesaid Surendra Prasad Chaurasia had approached this Court in CWJC No.5606 of 2013 raising a grievance that some private individuals including the petitioner in collusion with local government functionaries have illegally got the jamabandi created with respect to the lands in question on the ground of issuance of some parcha in their favour and thereby they have encroached over the public land, though, according to him, those private individuals are/were not entitled for issuance of such parcha for the lands in question. It is also pointed out that the aforesaid CWJC No.5606 of 2013 was finally disposed of by a Bench of this Court by an order dated 17.04.2013 (Annexure-8) with a liberty to the aforesaid petitioner to file a formal complaint before the Collector of the District, who, in turn, was directed to examine the matter and pass an appropriate order in accordance with law. It is next

contended by him that, in the light of the aforesaid order dated 17.04.2013 (Annexure-8) passed in the aforesaid CWJC No.5606 of 2013, the present Encroachment Case No.56 of 2013-14 (Annexure-9) was started by the District Collector, Vaishali on the petition filed by aforesaid Surendra Prasad Chaurasia and, therefore, that proceeding cannot be legally faulted.

After having heard the parties and on going through the order-sheet of Encroachment Case No.56 of 2013-14, this Court finds that by an order dated 17.12.2013 (Annexure-9), the District Collector, Vaishali had directed the Additional Collector to start an appropriate proceeding under Section 9 of The Bihar Land Mutation Act, 2011 (in short 'Act, 2011') and pass an appropriate final order and till the matter is decided by the Additional Collector, the proceeding of the encroachment case in question has been stayed.

Indisputably, in the light of the aforesaid order, Jamabandi Cancellation Case No.379 of 2013-14 was started against the petitioner and others and final order has been passed on 21.02.2014 (Annexure-11) by the Additional Collector, Vaishali and jamabandi running in the name of the petitioner has been cancelled. The aforesaid order passed by the Additional Collector is appealable and revisable under the provisions of the Act, 2011. Till the aforesaid order passed by the Additional Collector is not set aside or reversed by any higher authority/court, the fact remains that the petitioner is no longer having any right and title over the lands in question, since his jamabandi stood cancelled way back on 21.02.2014; therefore, he is apparently encroacher over the lands in question. That being the factual position, the District Collector, Vaishali or any other competent authority of the respondent State shall be well within their jurisdiction to pass an appropriate order for removal of encroachment

made by the petitioner over the lands in question.

Furthermore, this Court finds that the writ petition suffers from non-joinder of the necessary parties. Admittedly, the encroachment case in question was initiated at the behest of one Surendra Prasad Chaurasia and other villagers in the light of the order passed by this Court in CWJC No.5606 of 2013, but aforesaid Surendra Prasad Chaurasia has not been impleaded as party respondent in the present proceeding. Hence, the writ petition can be dismissed on the ground of non-joinder of the necessary parties also.

For the reasons recorded above, the present writ petition has to fail and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.07.2016
Transmission Date	NA