

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1089 of 2013

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Alok Choudhary Son Of Late Ramchandra Choudhary Resident Of
Village/Mohalla- Maulabagh, P.S. Daudnagar, District- Aurangabad

.... Appellant/s

Versus

1. The State Of Bihar, Through the Principal Secretary, Department of Public Work
Department, Govt. Of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government Of Bihar,
Patna
3. The District Magistrate, Aurangabad
4. The Sub-Divisional Officer, Daudnagar, Aurangabad
5. The Executive Engineer, Irrigation Sub-Division, Daudnagar, Aurangabad
6. The Sub-Divisional Officer, Irrigation Sub-Division, Daudnagar, Aurangabad
7. The Sub-Divisional Officer, Sub-Division, Daudnagar Public Works Department
(PWD), Daudnagar, Aurangabad
8. The Circle Officer, Daudnagar, Aurangabad

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Mrityunjay Kr & Ramesh Singh, Advocates

For the State : Mr Anujit Sinha, AC to PAAG II

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 17-10-2016

This is an intra-Court appeal against order dated
15.03.2013, passed by the learned Single Judge in *CWJC No 9189 of*
2012 (Alok Choudhary –Versus- State of Bihar & Others).

2 By the said order, under appeal, the learned Single
Judge had refused to entertain challenge of the writ
petitioner/appellant to the Land Encroachment Case No 17 of 2011-

2012 under orders of the Circle Officer, Daudnagar, District – Aurangabad. Learned Single Judge was of the view that there being appellate forum, the writ petitioner should prefer an appeal and, accordingly, disposed of the writ petition.

3 In this intra-Court appeal, arising from the said order, writ petitioner/appellant challenged the land encroachment proceeding on the ground that he had been given lease of the land in question by the Irrigation Department, (now Water Resources Department) on which he was running a bamboo shop, which lease was subsisting at the time when the land encroachment proceedings were initiated. These land encroachment proceedings were initiated at the instance of the Public Works Department (for brevity, *PWD*) allegedly for extension of road. However, as petitioner was not given any protection by this Court and was relegated to appellate forum, his shop was forcibly demolished and he was dispossessed.

4 When we took up the appeal, we asked the State to file counter affidavit. That raised the real issue. A detailed counter affidavit has been filed by the Water Resources Department clearly stating that the land was of the Irrigation Department and Irrigation Department legitimately and bona fide gave it on lease to the writ petitioner/appellant. It was categorically stated in the said counter affidavit that the said land was never acquired in any land acquisition



proceeding till date. To the contrary, the stand of the Road Construction Department has been that way back in the year 1961-1962, the land had been acquired for construction of road. Thus, on the face of it, we have two Government Departments, one asserting that the land was never acquired and it was still with the Water Resources Department and the other that the land had been acquired several decades earlier and it did not belong to the Irrigation Department. It was at the instance of the Road Construction Department (erstwhile PWD) that these public land encroachment proceedings were initiated. Petitioner did bring to the notice of the authorities the fact that he was leased the land by the Irrigation Department but without considering the aforesaid, final orders were passed and his shop was demolished. When he approached this Court, he was asked to go in appeal, without the learned Single Judge appreciating the facts aforesaid.

5 We have heard the learned counsel for the writ petitioner/appellant as well as learned counsel for the State.

6 The first thing we would notice is that there is a serious dispute as to who has the right over the land, whether it is the Road Construction Department or whether it is the Irrigation Department? This being a matter of serious dispute, coupled with the fact that Irrigation Department had been granting lease to the writ



petitioner/appellant, which was valid even when the proceedings for encroachment were initiated, in our view, it is settled principle that where there are serious disputes with regard to right of parties in respect of the land, the summary procedure of Public Land Encroachment Act cannot be resorted to. The parties would have to be relegated to Civil Court. On this premise, the order of the learned Single Judge cannot be sustained nor the proceedings be allowed to continue in any manner. Once it was pointed out by the writ petitioner/appellant to the authorities that he had got lease from Irrigation Department in respect of the land, which was not disputed by the Irrigation Department itself, no proceedings could lie under Public Land Encroachment Act because the petitioner was legally on public land. Thus, the public land encroachment proceeding aforesaid was wholly without jurisdiction.

7 The question is what is the relief that can be granted to the writ petitioner/appellant. At the time when petitioner came to this Court, the position could have been restored on basis of the lease but now the position is that, admittedly, the last lease in favour of the writ petitioner/appellant had expired in the year, 2012. We are in the year, 2016. There is no fresh lease in favour of the writ petitioner/appellant. If that be so, even though the encroachment proceedings are set aside, the writ petitioner/appellant cannot be

restored his position for he has no subsisting right in respect of the said land.

8 Thus, though we allow the appeal for the reasons aforesaid, we cannot give any further relief to the writ petitioner/appellant except declaring that the land encroachment proceedings were wholly without jurisdiction.

9 However, before parting, we may make it clear that if the Irrigation Department (Water Resources Department) is so wanting, it may take an informed decision in the matter and if it considers it to be its land, then grant fresh lease to the writ petitioner/appellant as it may be advised.

10 With this observation, this appeal stands disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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