

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5439 of 2015

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Krishnadeo Prasad, Son of Late Nand Lal Prasad, R/o Village- Kaila, P.S. -
Asthawa , District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar through District Magistrate, Nalanda.
2. The Collector-Cum-District Magistrate, Nalanda.
3. The Deputy Collector Land Reforms, Nalanda.
4. The Circle Officer, Asthawan, Nalanda.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shanker Kumar Thakur, Advocate
For the State : Mr. Kumar Alok, S.C. 7,
Mr. Neeraj Kumar, A.C. to S.C. 7

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 25-11-2016

Heard parties.

Through this writ application, the petitioner seeks
following relief:

“1. That this is an application filed on behalf of the petitioner above named for issuance of writ/writs in appropriate nature and directed against order dated 26.06.2012 passed in Encroachment Appeal No.09/1989 by District Magistrate Nalanda whereby and where under Circle Officer has been directed to remove the alleged encroachment of the petitioner from the lands of plots bearing Khesra No.1493 and 1490/7039 in Khata No.650/340 respectively.”

It appears from the record that a land encroachment case bearing Land Encroachment Case No.8/88-89 was drawn in which it was held that 3 decimals of land of plot no.1493 of khata



no.650 stands recorded in the revenue record of right as “Gair Majarua Malik” and 2 decimals of plot no.1490/7039 stands recorded as “Gair Majarua Aahar” and those have been encroached by the petitioner, therefore, direction was given to him to remove the encroachment. Appeal was preferred by the petitioner bearing Appeal No.9/89 which remained pending for several years and then matter was brought to the notice of this Court by Surender Kumar Ghosh, with respect to plot no.1491 and perhaps certain directions were given by this Court for removal of the same.

Vide order dated 30.08.2011 passed in C.W.J.C. No.8604 of 2011, a direction was given to the District Magistrate to take a final decision in the appeal no.09 of 1989. Thereafter, impugned order was passed.

A question has been raised by the petitioner that when, in an earlier proceeding bearing Encroachment Case No.4/7 of 85-86 drawn against the petitioner, after an inquiry on 14.11.1987, final order was passed holding that though the petitioner was in possession of 3 decimals of land of plot no. 1493 for the last about 25 to 30 years and had raised so construction thereupon, however, since that was a plot contiguous to his plot no. 1491, in view of the provision contained in Section 6(c) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “the Act”) the proceeding was



dropped and, thereafter, no appeal was preferred by the State authority and, as such, order having already attained finality, subsequent fresh proceeding with respect to the said land was absolutely without jurisdiction.

I find force in the said submission raised on behalf of the petitioner. Learned counsel for the State has submitted that such order appears to have been passed on extraneous consideration but there is nothing on record to show that. Even if it is assumed that such was the case, it is intriguing as to why no appeal was preferred against that order by the State authority. Once a decision was taken and was allowed to attain its finality, a fresh proceeding for the same plot would be without jurisdiction. A reference is made to a decision of this Court rendered in the case of **Mahanth Ramagya Giri Vs. the State of Bihar and others [1991 (2)PLJR 249]**. In that case also, encroachment proceeding was dropped after holding an inquiry and no appeal was preferred and after 9 years again notice under Section 3 was issued on the same party on the same allegation.

Accordingly, I hold that the subsequent proceeding with respect to plot no. 1493 would not be maintainable and, as such, the entire proceeding including the appellate order dated 26.06.2012 passed in encroachment appeal no.09/1989, so far it concerns the petitioner with respect to 3 decimals of plot no.1493, is quashed and



set aside.

However, the Collector is directed to settle the amount and quantity of damages and rent from the relevant date which should be paid by the petitioner as nothing has been done thereafter.

So far the plot no.1490/7039 is concerned, the same admittedly stands entered as “Gair Majarua Aahar” in survey record of rights, therefore, nobody can be allowed to be benefited under the garb of Section 6(c) of the Act. Section 6(c) lays down in clear terms that if any person, who together with his homestead, does not own more than 5 acres of land, has encroachment upon 10 decimals of public contiguous to his agricultural land has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such terms on payment of rent, holdings and damages for the use of this land. Such ground is not available in the present case as the allegation is that the petitioner is running flour mill upon the plot.

Therefore, in my view, the petitioner has not been able to establish any case warranting interference in the order impugned with respect to plot no.1490/7093. Though it is stated that petitioner is in possession for a long period upon the said land, however, that would also not be relevant as the Apex Court has held in **Hari Ram Versus Jyoti Prasad and another [(2011) 2 SCC 682]** that any



encroachment on public street by any person is a continuing cause of action and even as such a plea in a suit being barred by limitation cannot be taken. In **Jagpal Singh and Others Versus State of Punjab and Others [(2011) 11 SCC 396]**, the Apex Court has held that encroachment of public land in village /gram panchayat cannot be regularized by any authority. The interest of the villagers shall not suffer merely because unauthorized occupation has been subsisting for many years.

In above view of the matter, it is held that the petitioner has not been able to establish any right upon the aforesaid plot no.1490/7039 which is admittedly “Gair Majarua Aahar”. Immediate steps should be taken by the State authorities to remove such encroachment.

Accordingly, this writ application stands allowed in part only as indicated above.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2017
Transmission Date	NA

