

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5049 of 2014

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1. Rameshwar Rai
2. Ram Bilash Rai
3. Kailash Rai All Sons of Late Sundar Rai, all Residents of Village –
Deep (West), P.S.- Madhepur, District - Madhubani

.... Petitioners

Versus

1. The State Of Bihar
2. The District Collector, Madhubani
3. The Sub - Divisional Officer, Jhanjharpur, District - Madhubani
4. The Deputy Collector, Land Reforms, Jhanjharpur, District - Madhubani
5. The Anchal Adhikari (C.O.), Lakhanour, District - Madhubani
6. Sri Kedar Nath Jha, Son of Late Lekh Nath Jha, Resident of Village –
Deep, P.S. Madhepur, District - Madhubani
7. Deodhira Sanskrit Uchcha Vidhyalaya, Deep, P.S.-Madhepur,
District-Madhubani.

.... Respondents

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Appearance :

For the Petitioners : Mr. Yogendra Kumar, Adv.
For Respondent nos. 6 and 7 : Mr. Shashi Nath Jha, Adv.
For the State : Mr. Uday Pd. AC to G.P.-22.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 24-08-2017 As prayed for, learned counsel for the petitioner is permitted to implead Deodhira Sanskrit High School, Deep through its Principal as respondent no.7.

Since Sri Kedar Nath Jha is the Principal of Deodhira Sanskrit High School, Deep who is respondent no.6 and he has entered appearance through a lawyer, hence, there is no need of issuance of notice to respondent no.7.

Heard Mr. Yogendra Kumar, learned counsel for the petitioners, Mr. Shashi Nath Jha, learned counsel for respondent



nos. 6 and 7, and Mr. Uday Prasad, learned A.C. to G.P.-22, for respondent nos. 1 to 5.

The present writ application has been filed for setting aside the order dated 06.08.2013, passed by respondent no.5, the Circle Officer, Lakhnaur in Encroachment Case No. 11 of 2011-12, as contained in Annexure-14, whereby it has been held that the land appertaining to Khata No. 955 (old), 3184 (new), corresponding to New Plot No. 9318, carved out from Old Plot No. 9934, situated at Mauza Deep, P.S. Madhepur, District-Madhubani, belongs to Deodhira Sanskrit High School. Further prayer has been made for a direction to the respondent authorities not to dispossess the petitioners from the land in question.

It is submitted by learned counsel for the petitioners that the land appertaining to Khata No. 955 (old), 3184 (new), correspondent to New Plot No. 9318, carved out from Old Plot No. 9934, situated at Mauza Deep, P.S. Madhepur, District-Madhubani, is recorded in the revenue records as 'Anabad Bihar Sarkar' on which the petitioners have constructed their residential houses since long and thereafter, the local authorities have allotted the land in question for construction of 'Indira Awas' in favour of the petitioners. While 'Indira Awas' was



being constructed on the land in question, respondent no.6, being the Principal of the Deodhira Sanskrit High School, Deep, raised objections and filed a Writ application whereupon, this Court directed the Circle Officer to decide the issue whether the land belongs to the School or not. It is further submitted that the land in question is Hind Anabad Bihar Sarkar and hence, on the land in question, Indira Awas was directed to be constructed by the authorities. The Circle Officer, while deciding the encroachment proceeding, has wrongly decided the right, title and interest of the School over the land in question, which is not permissible. It is further submitted that the authorities are not empowered to remove encroachment, if the land-less person encroaches upon $12^{1/2}$ decimals of the land before 10th of October, 1955, as incorporated under provisio to Section 6(1) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'Act'), but the authorities have not considered the case of the petitioners, hence the impugned order deserves to be quashed.

Learned counsel for respondent nos. 6 and 7 submits that the school in question was established in the year 1941 and has continuously been imparting Sanskrit education to the students of localities, since then. The School is running under the control of Bihar Sanskrit Siksha Board, Patna. In the year 1956,



one late Tej Nath Jha donated 1 bigha, 17 Katha and 8 dhurs of land to the School through registered gift dated 23.03.1956. On behalf of Deodhira School, the State of Bihar through the then Circle Officer, Madhepura, accepted the aforesaid donation and the school in question came in possession over the gifted land appertaining to Khata No. 1049, Plot Nos. 9929, 9934, Khata No. 1046, Plot no. 9930 and Khata No.1036, Plot No. 3096. Consequent to the aforesaid gift deed, Jamabandi No. 322 was opened in the name of the said school and rent was being paid by the school. The rent receipts have been brought on record as Annexure-B/6 to the counter affidavit filed on behalf of respondent nos. 6 and 7. The gifted land was recorded in the C.S. Khatiyan as 'Gair Mazarua Khas Land' in the name of one Grih Lata Ojhain, wife of Grih Nath Jha. Subsequently, after vesting of Jamindari, successor of Grih Lata Ojhain, namely, Babu Tej Nath Jha donated the aforesaid land to the school for imparting Sanskrit education to the students. When the petitioners started constructing Indira Awas on the land in question of the school, notices were issued by the Circle Officer, Lakhnaur vide Notice No. 115 dated 02.02.2012 to the petitioners as well as respondent no.7 to submit documents with regard to land in question. The said notice was challenged by the school in CWJC No. 20820 of



2012. A Bench of this Court, vide order dated 07.11.2012, disposed of the said writ application directing the Circle Officer, Lukhnaur to consider the documents submitted by the petitioners and others in the light of the notice dated 02.02.2012 and to pass reasoned order within two months from the date of receipt/production of the copy of the order. In the event, Circle Officer finds that the lands in question belongs to the school, then he shall ensure that the land of the school is not used by other authority/agency for any other purpose and restore the same to the school. During pendency of the encroachment proceeding, being conducted by the Circle Officer, notices were issued to the petitioners, since claim for issuance of Purga was rejected vide order dated 27.09.1989, as contained in Annexure-E/6 to the counter affidavit filed on behalf of respondent nos. 6 and 7.

The petitioners came to this Court by filing CWJC No. 6667 of 2013 challenging the Notice No.2, dated 15.01.2013, as contained in Annexure-12, whereby a Bench of this Court directed the Circle Officer to hear the party and to pass reasoned order dealing with the rival claims of the parties and thereafter only pass consequential order, as may be necessary.



Consequently, final order was passed by the Circle Officer on 06.08.2013 in Encroachment Case No. 11 of 2011-12, in pursuance to the direction of this Court and it was held that the land in question belongs to the School. The said order is under challenge in the present proceeding.

Learned A.C. to G.P.22, relying on the counter affidavit filed on behalf of respondent nos. 2 to 4, submits that the land in question appertaining to Khata No. 955 (old), Plot No. 9934, measuring an area of 1 Acre and 16 Decimals was the land of Maharaj Darbhanga, while New Plot No. 9318 is carved out from old Plot No. 9934 and the same is recorded in Revisional Survey Khatiyan as 'Anabad Bihar Sarkar' (nature of land 'Bhind'), but without scrutinizing the revenue records the impugned order has been passed.

To this contention of learned counsel for respondent nos. 2 to 4, learned counsel for respondent nos. 6 and 7 submits that the entry made in the revisional survey, whereby the land in question is recorded as 'Anabad Bihar Sarkar' was challenged in a suit under Section 106 of the B.T. Act by the School in question and consequently, the order of correction was made vide order dated 12.05.2009 passed in Case No. 2665 of 2005 by Settlement Officer, Jhanjharpur, as contained in Annexure-C/6 to



the counter affidavit filed on behalf of respondent nos. 6 and 7, but the said order has not been challenged. Consequently, in pursuance to the order passed, necessary correction was made in the Khatiyani and the land in question was recorded in favour of the school. The corrected Khatiyani has been brought on record as Annexure-J/6 of the supplementary counter affidavit filed on behalf of respondent nos. 6 and 7.

Considering the rival submissions of the parties, it is not in dispute that the proceeding under the Act is a summary proceeding, where right, title or interest of the respective parties cannot be decided, since, the adjudication of such issues requires leading of evidence. So far as present case is concerned, the Circle Officer has passed the order in pursuance to the direction of this Court, which gets reflected from the order dated 07.11.2012 passed in C.W.J.C. No. 20820 of 2012. Paragraph of the order reads as follows:-

“Let Circle Officer, Lukhnaur consider the documents submitted by the petitioner and others in the light of the notice dated 02.02.2012 and pass reasoned order within two months from the date of receipt/production of a copy of this order before the Circle Officer. In the event, Circle Officer finds that the lands in question belong to the school then he shall ensure that the lands of the school are not used by any other authority/agency for any other purpose and restored to the school.”



This order further gets re-enforced by the order dated 15.05.2013, passed in C.W.J.C. No. 6667 of 2013, which was filed by the petitioners aggrieved with the notice dated 15.01.2013, as contained in Annexure-12 in the present writ application, whereby the petitioners were directed to vacate the land in question, concerning which, this Court directed not to dispossess the petitioners until the rival claims of the parties are decided. The relevant portion of the order reads as follows:-

“This writ application is accordingly disposed of with a direction to the Circle Officer to keep the notice no.2 dated 15.01.2013, as contained in Annexure-11, in abeyance, not to take any steps for dispossessing the petitioner, hear the parties and pass a reasoned order dealing with the rival claims of the parties and thereafter only he will pass consequential order as may be necessary.”

It further appears that respondent nos. 6 and 7 filed contempt application being MJC No. 2502 of 2013 for violation of the order dated 07.11.2012 passed in C.W.J.C. No. 20820 of 2012, when a Bench of this Court vide order dated 12.03.2014, directed the petitioners to file contempt application if on dismissal of the present writ application, the school in question is not put in possession of the land in question. Relevant portion of the order reads as follows:-

“Highlighting the same submission encroachers of land



belonging to the petitioner-school have filed C.W.J.C. No. 5049 of 2014 before this Court and it is submitted by the counsel for the State that no sooner C.W.J.C. No. 5049 of 2014 is dismissed petitioner-school shall be put in possession of the lands which is under encroachment by the petitioners of C.W.J.C. No.5049 of 2014.

In view of the submission made by the counsel for the State and the contents of letter dated 10.03.2014, Annexure-K to the show cause, I dispose of the contempt petition granting liberty to the petitioner-school to approach this Court by filing a short contempt petition if after dismissal of the said writ petition petitioner-school is not put in possession of the lands in question.”

Considering the aforesaid facts, this Court is refraining from interfering with the impugned order, since the said order has been passed by the Circle Officer, in pursuance to the order of this Court. Hence, the writ petitioners are precluded from challenging the order of the Circle Officer on the ground that he has decided the claim of the school in question in an encroachment proceeding in pursuance to the direction of a Bench of this Court. Moreover, the writ petitioner has not challenged the order dated 07.11.2012 passed in C.W.J.C. No. 20820 of 2012.

So far as claim of the petitioner that he cannot be dispossessed in view of the Proviso to Section 6(1) of the Act, is concerned, this Court is of the view that the petitioner has not



brought anything on record to suggest that the petitioner is in possession of the land in question, since prior to 10th of October, 1955, which is *sine qua non* for exonerating an encroacher from the encroachment proceeding. This Court is further not inclined to interfere on the ground that the impugned order, being a final order under Section 6(1) of the Act, is appealable under Section 11 of the Act, but the petitioner chose to file the present writ application without resorting to the alternative remedy of appeal.

Accordingly, the present writ application is dismissed.

(Dinesh Kumar Singh, J)

Amrendra/-

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