

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6465 of 2014

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Panchiya Devi, Wife of Paltu Manjhi, Resident of Village Malhipakar,
Police Station- Hathauri, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar, through the District Collector, Samastipur
2. The Sub Divisional Magistrate, Rosera, District- Samastipur
3. The Circle Office, Shivajinagar, District Samastipur
4. Bhagirath Manjhi, Son of Late Sukan Manjhi
5. Bishun Manjhi, Son of Ram Sogarath Manjhi. Both 4 and 5 are Resident of Village Malhipakar, Police Station Hathauri District- Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kundan Kumar, Adv.

For the Respondent/s : Mr. AC to G.A. 9

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-07-2017 Heard Mr. Kundan Kumar, learned counsel for the
petitioner and learned AC to G.A.-9 for respondent nos. 1 to 3.

The nature of order this Court intends to pass does
not require issuance of notice to private respondent nos. 4 and 5.

The present writ application has been filed for a
direction to the respondent no. 3, Circle Officer, Shivajinagar to
get the encroachment removed from the public road pertaining to
Khata no. 76, Plot nos. 949, 950 and 951, which has been
encroached by respondent no.5 and thereby, entrance of the
residential house of the petitioner, standing on Khata no. 69 and
57 (old) Plot No. 521 and 539 Khata No. 279 (new) Plot No. 925
and 926, has been blocked.



It is submitted by learned counsel for the petitioner that the husband of the petitioner, Paltu Manjhi, purchased a piece of land pertaining to Khata No. 69 and 57 (old) Plot No. 521 and 539 Khata No. 279 (new) Plot No. 925 and 926, admeasuring 1 katha 11 dhur, situated in Mauza Unri Bariyar, Village Malhipakar, P.S. Hathauri, District Samastipur, from one Ram Bilash Rai through registered sale deed dated 24.2.2012 and thereafter, constructed his residential house. The private respondent nos. 4 and 5, Bhagirath Manjhi and Bishun Manjhi have blocked the only approach pathway to the house of the petitioner by making encroachment on the public road situated on Khata nos. 76, Plot no. 949, 950 and 951.

Hence, for removal of the aforementioned encroachment, the petitioner filed an application before the respondent no. 2, Sub Divisional Magistrate, Rosera, on 12.12.2013, as contained in Annexure-1, with a prayer for initiating a proceeding under Section 133 of the Code of Criminal Procedure, but neither any proceeding was initiated nor the encroachment was removed. Consequently, the petitioner filed an application before the Sub Divisional Magistrate, Rosera, respondent no.2, on 16.1.2014. The said application was transmitted by respondent no. 2 to respondent no. 3, Circle



Officer, Shivajinagar, Samastipur, for needful. The petitioner also filed an application before the Collector, Samastipur for redressal of his grievance, vide application dated 16.1.2014.

Though in pursuance to the various applications being submitted by the petitioner, a proceeding under the provisions of Bihar Public Land Encroachment Act, 1956 (hereinafter called as the 'Act') was initiated, but the same was mechanically dropped. Hence, the present writ application.

Learned A.C. to G.A.-9 submits that in pursuance to the application filed before the respondent no. 2, the SDM, Rosera, on 12.12.2013, who forwarded the same to the respondent no. 3, the Circle Officer, Shivajinagar, and directed him to take action in accordance with law and consequently, the Anchal Amin and Halka Karmchari were directed to measure the land and submit report. The said report was submitted vide letter no. 364 dated 23.6.2015, as contained in Annexure-A to the counter affidavit, filed on behalf of the respondents. The Anchal Amin submitted a report, vide report dated 25.6.2015, to the effect that the encroachment has been made on the raiyati land of the petitioner by the private respondent nos. 4 and 5. Hence, the grievance of the petitioner cannot be redressed through a summary proceeding like proceeding under the Bihar Public Land Encroachment Act. In



view of the said report, the Circle Officer, Shivajinagar, respondent no.3, vide order dated 25.06.2015, passed in Encroachment Case No. 15 of 2014-15, as contained in Annexure-D to the reply to the counter affidavit, dropped the proceeding.

Having heard learned counsel for the parties, this Court is of the view that a proceeding can be initiated under Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'), if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land.

In the present case, after due enquiry, the Circle Officer, came to a conclusion that the encroachment is not on a public land and consequently, dropped the proceeding. The public land has been defined in sub-section (3) of Section 2 of Act, which reads as follows:

“2. Definitions – In this Act unless there is anything repugnant in the subject or context –

(1)...

(2)...

(3) “public land” means any land [managed by or] vested in the Union of India or the State of Bihar, or in any local authority [or statutory body], [public undertaking,] educational institution



recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.”

Hence, the proceeding under the Act can only be initiated, if the land comes within the definition of public land as quoted above.

In the present case, the proceeding was initiated, but it was dropped on the basis of the report of the Halka Karmchari based on the measurement made by the Anchal Amin. Section 6(1) of the Act reflects that on initiation of proceeding under Section 3 of the Act and issuance of notice to the affected persons, after hearing the counsel for the parties and taking evidence and after making such enquiries, it did not necessitate that the Collector may pass final order which included the dropping of the proceeding. Section 6(1)(A) of the Act reads as follows:-

“6. Final Order of the Collector- (1) In all cases not covered by the provisions to sub-section (2) of section 3, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such enquiry as he deems necessary the Collector may, as



the circumstances of the case require-

(a) either drop the proceeding, or..”

Section 11 of the Act prescribes the appellate jurisdiction, which prescribes appeal from every order passed under Sections 6, 7 and 8 of the Act. Hence, in the present case, the proceeding was dropped by the Circle Officer and same is appealable before the Collector under Section 11(i) (a) of the Act.

So far as, the dispute between the petitioner and respondent nos. 4 and 5 is concerned, the same cannot be resolved in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, as the resolution of issue involves disputed question of fact requiring the decision with regard to title and possession of the respective parties which cannot be determined without leading of evidence and in such circumstances, the court should ordinarily relegate the parties aggrieved to agitate the issue before Civil Court.

The Apex Court elaborated the same view in the case of Real Estate Agencies Vs. State of Goa and Ors. (2012) 12 Supreme Court Cases 170, where certain development works/raising construction over some plot of land was in dispute though the title over the land was not in dispute but it was held that the writ court may refuse to interfere if the process of



determination of the issue, the disputed question of fact or title would be required to be adjudicated. Paragraph 16 reads as follows:-

“16. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.”

Same view has been reiterated by the Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others,



AIR 1992 SC 1018, holding that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads as follows:

“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground,



without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.”

In the present case, the issue raised cannot be decided in a summary proceeding under the provisions of the Act, since the fundamental facts required for deciding the issue are not on record.

Accordingly, this writ application is disposed of with liberty to the petitioner to avail remedy before appropriate forum.

(Dinesh Kumar Singh, J)

Anil/Amrendra/-

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