

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2252 of 2018

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Md. Naushad Alam, Son of Asgar Ali, Resident of Village- Madanpur, G.T. Road, P.S. & P.O.- Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Aurangabad.
3. The Additional Collector, Land Reforms, Aurangabad.
4. The Circle Officer, Madanpur Circle, Madanpur, Aurangabad.
5. The S.H.O. Madanpur Police Station, Aurangabad.
6. Santan Prasad Singh, Son of Kameshwar Prasad Singh, Resident of Village- Umaga, P.S.- Madanpur, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Birendra Nath Mishra
		Mr. Shailendra Kumar Singh
For the Respondent/s	:	Mr. Rakesh Ranjan, AC to AAG12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 20-02-2018 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities, particularly, respondent no. 2, the District Magistrate, Aurangabad to take appropriate disciplinary action against respondent no. 4, The Circle Officer, Madanpur for arbitrarily demolishing the part of residential house of petitioner situated on the land appertaining to Tauzi No. 1453, Thana No. 785, Khata No. 23, Plot Nos. 1092/1686 in Village Madanpur, in the district of Aurangabad as part of the residential house of the petitioner has been demolished in pursuance to the order dated 22.1.2013 passed in Encroachment Case No. 17 of



2011-12 by respondent no. 4, The Circle Officer, Madanpur in spite of the direction issued by the respondent no. 2, the District Magistrate, Aurangabad vide letter no. 328 dated 28.7.2017 for maintaining status quo on the land in question.

The factual matrix would unveil that Encroachment Case No. 17 of 2011-12 was initiated for removal of encroachment from the land in question treating it as a public land. The respondent no. 4, Circle Officer, Madanpur vide order dated 22.1.2013 held that 1 decimal of land of Plot No. 1094, Khata No. 176 has been encroached upon and the same may be removed. Aggrieved by the said order, the petitioner preferred Encroachment Appeal No. 76 of 2014 before the respondent no. 2, District Magistrate, Aurangabad, which was admitted vide order dated 9.9.2014 and the lower court records were called for. Subsequently, petitioner prayed for staying the order of the respondent no. 4, Circle Officer, Madanpur, whereupon the respondent no. 2, District Magistrate, Aurangabad vide Memo no. 328 dated 28.7.2017, as contained in Annexure 9, directed the respondent no. 4, Circle Officer, Madanpur for maintaining status quo on the land in question but in spite of that, the house of the petitioner has been demolished on 14.12.2017. Hence, the present writ application.



It is further submitted by learned counsel for the petitioner that the petitioner claims the land in question as his ancestral land and having valid title over the same and the same cannot be treated as public land. Moreover, in a summary proceeding under the Bihar Public Land Encroachment Act where the question of title or possession cannot be looked into by the Circle Officer.

Learned counsel for the State respondents submits that at present he is not having instruction whether the appeal has been disposed of or not and the petitioner has the opportunity to raise all the contentions before the appellate forum.

Having heard learned counsels for the parties, in view of the nature of order this court intends to pass, this court is not inclined to adjourn the matter any further or to issue notice to private respondent no. 6. This court is reluctant to interfere since it is admitted position that Encroachment Appeal No. 76 of 2014 is still pending before the District Magistrate, Aurangabad. However, it is expected from the District Magistrate, Aurangabad to consider all the contentions of the petitioner and try to dispose of the appeal, preferably within a period of two months from the date of receipt/production of a copy of this order. But, if for any reason, the District Magistrate,



Aurangabad is not in a position to dispose of the appeal, he will consider and dispose of the appeal of the petitioner filed for interim order during the pendency of appeal, without being prejudiced by this order in accordance with law.

It is made clear that this Court has not expressed any opinion upon the merits of the claim of the petitioner.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

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