

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14497 of 2016

Uma Shankar Singh, Son of late Satya Narayan Singh, Resident of
Near Girihinda Bus Stand, Sheikhpura, P.S. & District Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Land and Revenue
Department, Government of Bihar, Patna.
3. The Collector, Sheikhpura.
4. The Sub-Divisional officer, Sheikhpura District Sheikhpura.
5. The Anchal Adhikari, Sheikhpura, District Sheikhpura.

.....Respondent/s

Appearance :

For the Petitioner/s	:Mr. Abhay Shankar Jha, Advocate.
	: Mr. Sanjay Kumar Jha, Advocate
	: Mr. Vivek Kumar, Advocate
For the Respondent/s	: Mr. Raj Kishore Roy- GP18

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date : 26-03-2018

I have heard parties and perused the records of this case.

Through this writ petition the petitioner seeks following
reliefs:-

- (i) *For Setting aside the order dated 26.12.2015 (Annexure-4) passed by the Sub-Divisional Officer, Sheikhpura (respondent no. 4) on the application of the petitioner for settlement of the land in question in his favour in the light of memo No. 2188 dated 12/13 May, 1971 as directed by the Hon'ble Court vide order dated 06.08.2015 passed in CWJC No. 1497 of 2015 (Annexure-2).*
- (ii) *For quashing the notice dated 02.06.2016 and dated 21.06.2016 (Annexure-6 series) holding the same as*



illegal, arbitrary and without jurisdiction.

(iii) For restraining the respondent authorities from removing/demolishing the residential house of the petitioner situated over the land in question.

(iv) For any other relief or reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case.

The petitioner had earlier moved this Court by filing CWJC No. 1497 of 2015 questioning the proceeding of Encroachment Case No. 12 of 2013-14 including the order dated 10.09.2014 passed by the Circle Officer, Sheikhpura under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') whereby he was directed to remove the encroachment from a piece of land bearing Khata No. 108, Khesra No. 01 situated in village-Girihinda, Circle-Sheikhpura in the district of Sheikhpura to the extent of 3.5 decimals. It was stated that the land in question was *Gair Majarua Malik* having a character of mountain and several persons were charged with encroachment including the petitioner.

However, it appears that in course of hearing certain circulars/executive instructions were produced



before the Court to impress upon that the landless people belonging to Scheduled Caste/Scheduled Tribe and Backward Classes could be settled to the extent of 5 decimals of land. The learned Single Judge desired an opinion of the Principal Secretary, Land Reforms Department who had stated in his counter affidavit that a policy decision has been taken by the Government to settle encroached land which is in the nature of *Gair Majarua Malik* with persons belonging to SC/ST & B.C. community and other landless persons having not more than 2.5 acres of land without charging any *Salami*. On such statement having been made by the Principal Secretary, the order dated 10.09.2014 was set aside so far the petitioner was concerned in view of the fact that, according to the counter affidavit filed by the Principal Secretary, the concerned Sub-Divisional Officer was authorized to regularize such encroachment made by landless encroachers up to the extent of 2.5 acres and further fact that the petitioner had placed reliance upon a circular dated 12.09.1971 to support his possession over the land. The petitioner was granted liberty to file an appropriate application before the Sub-Divisional Officer,



Sheikhpura for consideration of his claim for settlement over the land in question who was directed to pass an order after considering the matter of the petitioner and dispose of his application.

It appears that subsequently MJC No. 363 of 2016 was also filed as the direction of the Court was not being complied. This application was disposed of vide order dated 27.07.2016 as contained in Annexure-7 taking in notice that the Sub-Divisional Officer has already disposed of the matter. Thereafter, since the petitioner was aggrieved by the order passed by the Sub-Divisional Officer, present writ petition came to be filed by him.

Learned counsel for the petitioner has submitted that the petitioner is in possession of the aforesaid piece of land since the year 2000 and, as such, he claimed benefit of settlement of the said land in terms of the policy decision of the State Government. The relevant circulars/executive instructions have been produced before this Court during the course of hearing.

Now, this Court, at the first instance, would have to examine the relevant provisions of the Bihar Public Land Encroachment Act, 1956 to reach to the conclusion



as to whether the petitioner is entitled for such claim or not?

Section 3 of the Act lays down that if the Collector under the Act receives an application made by any person or upon any information received from any source that a person has encroached upon a public land he is entitled to initiate a proceeding to remove encroachment. For that purpose, encroacher has to be noticed. Such encroacher is entitled under Section 4 of the Act to raise any defence in pursuance to the notice received by him under Section 3 of the Act by appearing before the Collector and he would be given an opportunity as if he was a defendant in a properly framed suit. Section 5 provides benefit of hearing to the parties interested and then, under Section 6 of the Act, final order is to be passed by the Collector. Section 6 of the Act envisages that the Collector, after the hearing and taking evidence, if required, and on making such inquiry which is desired, may drop the proceeding or make the temporary injunction issued under sub-clause (a) of sub-section (1) of section 3 absolute against the persons making encroachment of the public land. However, there is also a



provision under Section 6(2) of the Act that if such person does not comply with the orders passed by the Collector, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs. 2,000/- or with both and the offence has been made cognizable notwithstanding anything contained in the Code of Criminal Procedure. There is a provision to issue a final notice in terms of the provision under Section 6 in Form II contained in Appendix-1 of the Rules framed under Bihar Public Land Encroachment Act, 1956. However, under Section 6(c) of the Act there appears to be a provision benefiting the encroachers to some extent in certain circumstances. For better appreciation, Section 6(c) of the Act is extracted as under:-

“6(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the



basis of such fair rent as the Collector may deem proper, or”

From the perusal of the aforesaid provision, it appears that if any person together with his homestead does not own more than 5 acres of land and has encroached up to 10 decimals of public land which is continuous to his agricultural holding and has used the encroached public land for agricultural purposes then the Collector may settle such public land with such person on payment of rent and damages for the use of this land. However, there is no provision under the Act benefiting certain class or caste. Thus, it appears from the aforesaid provisions of law of the Bihar Public Land Encroachment Act that the encroachment has been envisaged even as a criminal offence and if the order of the Collector for vacating the encroached land is not complied with consequence is imprisonment of one year with fine of Rs. 2,000/-. Now the question would be, if such was the intent of Legislature, then, by writing letters and coming with executive orders, whether it would be open for the State Government to come up with provision to settle the land to the encroachers blunting the will of the Legislature as



envisaged under the Bihar Public Land Encroachment Act?

In such background of the matter, the letters or circulars issued by the State Government is to be considered.

First one is the letter no. 4 /खा० म० नीति ०१ ७२ -2188/रा० पटना. 15, दिनांक 12/13 मई, 1971. This letter appears to have been written by the Deputy Secretary to all the Divisional Commissioners stating that the landless persons, as per the policy of the State, if they belong to Scheduled Caste/Scheduled Tribe or Backward Class, if they have encroached land but that is not above in extent 2.5 acres then, without *Salami*, that can be settled in their favour and if the landless persons are other than such class or caste then the same can be settled after accepting 20 times *Salami*. It is also stated that the persons who are having 50 decimals of land would be considered as landless. It is also stated in the letter that it will not be acceptable in case of *Gair Majarua Aam* land unless the nature of land has completely changed and that has not remained for common public use rather the same has become agriculturable.



The second one is Resolution dated 31.12.2014 in the name and style of बिहार राज्य भाहरी क्षेत्र (अनुसूचित जाति एवं अनुसूचित जन जाति) के वासरहित परिवारों के लिए वासभूमि नीति, 2014.

It emanates from perusal of the aforesaid resolution that, for the purpose of settlement of homestead in favour of Scheduled Caste/Scheduled Tribe or landless or the persons who are not having any homestead, there was no proper policy decision. As such, the Government was feeling difficulty in settling the land. Therefore, the land policy, 2014 was carved out. The first clause says that a survey has to be made regarding the lands which are available to be settled in the urban areas and then after survey of Scheduled Caste/Scheduled Tribe persons or other weaker sections and upon consideration and, if they are suitable to be settled land, such decision would be taken. However, admittedly till date no such survey has been made in the locality concerned and the land in question has not been declared in such survey to be fit to be settled to such type of weaker sections. Subsequently another letter dated 03.07.2015 has been produced which has been written by Principal Secretary to all the District



Magistrates which is again regarding performing the survey of habitable land in the urban areas and, thereafter, taking a decision. It is stated therein that it has become clear that in the urban areas survey is to be conducted to demarcate the persons belonging to Scheduled Caste and Scheduled Tribe to whom homestead land is to be settled but the survey is yet to be started with respect to the lands which would be available in the urban area for settlement. Thus, it would be clear therefrom that 1971 circular was with respect to only agricultural lands and not urban land as the further circulars disclose that the survey has to be conducted for demarcating such urban lands which would be available for settlement to the weaker sections, however, the survey work has not even been initiated as yet.

In such a situation, the question would be that whether the said encroached land is to be settled in favour of the petitioner? Secondly, whether such policy decision is in confirmation or compliance of the intent of Legislature as contained in the Bihar Public Land Encroachment Act, 1956? From plain reading of Section 6 of the Act, the answer has to be negative. There is no



provision under the Act to benefit the encroachers. There is scheme under the Act to remove the encroachment and even if such order is not complied there is provision of imprisonment and the offence has been made cognizable. Question would be as to how the State has can come up with such type of executive instructions? If somebody belonging to weaker section or landless person or even of the general category acquire such prestigious land of the urban area then that land should be settled with them? In such a situation, whether his claim can be accepted? The answer has to be negative. Only relaxation which has been given under the Act under Section 6(c) is in case of agricultural land with the condition that the person does not own more than 5 acres of land and has encroachment up to 10 dec. of public land contiguous to his agricultural holding and using it for agricultural purpose.

This Court is aware that ours is a welfare State and it is also desirable that weaker sections and landless persons should be given homestead lands. However, this has to be separated with the case of encroachment. In an independent proceeding, after the Government has taken a policy decision to settle certain land in favour of weaker



section, such settlement of course can be made. This Court would have no objection in that but the question is that whether encroachers should be rewarded? The answer has to be negative. Lands can be settled in favour of weaker sections of the society but not as a reward to encroachment specially in urban areas where the State is everyday facing the issue of encroachment on the public land causing impediment in free flow of traffic. This stand of this Court stands fortified by further action of the Legislature by bringing amendment in Section 6 of the Act published in Gazette on 30th of May, 2012. Section 6(c) of the Act, by which the aforesaid relaxation was given to the encroachers under certain circumstance, has now been deleted and not only the imprisonment of one year term has been retained for not following the directions of Collector to remove the encroachment but the fine has been enhanced from Rs. 2,000/- to Rs. 20,000/- and both have been accepted as penal provision. In such a situation, it has to be held that the Legislature is not intending to grant relaxation to the encroachers irrespective of the fact that he belongs to affluent class or weaker section. Therefore, the policy of settling the land



to the landless against which there is no issue at all, can not be clubbed with the issue of encroachment and, as such, a decision can not be taken to grant benefit to the encroachers who are not law abiding persons. The Hon'ble Supreme Court in **Hari Ram vs. Jyoti Prasad and Anr. [(2011) 2 SCC 682]** has taken a strict view of the matter. It has held in a matter arising out of a suit for removal of encroachment in a representative capacity that the encroachment of public street by any person is a continuing wrong, thus, plea of suit being barred by limitation has no merit so long as encroachment of public property is a public wrong and so many obstructions or obstacles created on the public land wrongfully continues.

The Hon'ble Supreme Court in yet another decision rendered in **Jagpal Singh and Ors. vs. State of Punjab and Ors [AIR 2011 SC 1123]** has taken more strict view by holding that in a case in which panchayati land meant for common interest of villagers was unauthorizedly encroached by certain persons, the same cannot be allowed merely because unauthorized occupation has subsisted for so many years. Regularizing such irregularities by taking a decision by the Government



cannot be permitted and unauthorized occupants are liable to be evicted.

The State authorities have filed counter affidavit refuting the claim of the petitioner. It is stated in the counter affidavit that the land encroached by the petitioner falls under the Nagar Parishad area and the 1971 Resolution, on which the petitioner places reliance, is not for urban area rather it is for agriculture area. A stand has been taken that there is no survey or inspection and demarcation of the lands of the urban area which are fit to be settled in favour of the weaker sections and, thus, the land in question was not available for that as the land is situated on a hill but there is bus-stand and auto stand etc. nearby. Such land cannot be settled in his favour even if the same has been registered as *Gair Majarua Malik Hill* as the land of the dimension 50 feet x 60 feet land has been marked for the construction of Mahadalit Community Hall-cum-Work Shade under the Scheme No. 29/2013-14. It is stated by learned counsel for the petitioner that this land has not been selected rather the land contiguous to this land has been selected.



Be that as it may, it is clearly stated that the land can easily be used for the general public purpose and not only that, it has been questioned that the petitioner belongs to a certain category. It is stated that the petitioner has suppressed this fact that he is resident of Village-Patalapur Diara, Post-Madhopur, P.S.-Shahpur, District-Patna.

Learned counsel for the State orally states before this Court that the petitioner is having two addresses and he is a landholder. However, it is being objected by the petitioner by submitting that the State has not stated the aforesaid fact on affidavit. Another fact which has been disclosed by the State is that the petitioner is an employee of the Nagar Parishad, Sheikpura. He is a JCB driver and, taking an advantage of that, he has forcibly captured the land belonging to Nagar Parishad and now he is claiming, being encroacher, to get it settled in his favour.

Much emphasis was given by the learned counsel for the petitioner at the time of hearing regarding the nature of the land being *Gair Majarua Malik* Hill and not *Gair Majarua Aam*. However, the question is whether the *Gair Majarua* Land is open for encroachment or that



is not a public land? The answer has to be in negative. *Gair Majarua* land is the land which was in possession of the ex-intermediary but if that has not been settled with him after vesting of Zamindari, the same would become a public land. The survey is to be conducted by the State under its policy to demarcate the urban lands which are fit to be settled in favour of weaker sections and in the absence of that, in my opinion, that can not be settled in favour of a person who has been declared as an encroacher cannot be rewarded in such manner specially in view of the decisions of the Apex Court rendered in **Hari Ram and Jagpal Singh** (supra).

As the last resort, the petitioner is raising the plea of technicality that under Section 6 (2) of the Act notice has not been given to him. However, from the records of the case it appears that everything has been considered and it has been also considered that petitioner is not the person belonging to Scheduled Caste/Scheduled Tribe rather he comes under B.C.-II category and, thereafter, decision was taken to issue notice on 31.05.2016. Subsequently, from the order dated 16.06.2016, it appears that the petitioner neither appeared till 09.06.2016 nor did



he give any information. However, on 14.06.2016, he filed his objection which has been considered in the order dated 16.06.2016. Subsequently, on 10.08.2017 final notice was issued to him that if he does not remove the encroachment then it would be removed by taking help of the District Administration. Thus, the aforesaid claim of the petitioner is also unfounded.

That apart, a question was asked from the learned counsel appearing for the petitioner as to under what authority the petitioner is occupying the land. The answer given by him cannot be accepted since the petitioner has encroached the public land and, though several persons who were also illegal occupants have already removed the encroachment, he should be allowed to remain there for the reason of his long occupation of the encroached land. This submission made on behalf of the petitioner has been noted to be rejected in view of the discussion made above.

Thus, in my considered view, there is no merit in the writ petition. Accordingly, the same stands dismissed.



The petitioner is directed to remove the encroachment immediately, if the same has not been removed already.

(Dr. Ravi Ranjan, J)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.06.2018
Transmission Date	NA

