

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1112 of 2018**

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1. Lalan Singh S/o Late Kawaldeo Singh
2. Manager Singh
3. Suraj Singh Both S/o late Kamla Singh
4. Lal Babu Singh
5. Sikildeo Singh Both S/o late Yamuna Singh All R/o Village - Man
Tengrahi, P.O. Maharani, P.S. - Mahmudpur, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Gopalganj.
2. The Sub Divisional Officer, Gopalganj.
3. The Deputy Collector, Land Reforms, Gopalganj.
4. The Circle Officer, Baikunthpur Circle, District - Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vagisha Pragya Vacaknavi

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

6 25-09-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition for quashing the order dated 31.03.2018 passed by District Judge, Gopalganj in Misc. Appeal No.4 of 2017 by which the learned District Judge, Gopalganj confirming the order dated 31.01.2017 passed by the learned Sub Judge XV, Gopalganj in Title Suit No.475 of 2012 by which the learned Sub Judge rejected injunction petition of the petitioners-plaintiffs as not maintainable under Section 16 of the Bihar Land Encroachment Act.

The relevant and material facts is that Bhograj Singh was



the common ancestor of the plaintiffs who died prior to revisional survey leaving behind two sons, Nathuni Singh and Shiv Baran Singh. The suit property comprising of Khata No.24, Plot No.122, 154, 290, 209, 298 having total area 15 bighas 8 kathas 6 dhurs situated in Mauja Man Tengrahi, Pargana Marhal, Thana Mohammadpur, District-Gopalganj. The suit land was recorded as Gairmajarua Malik and the nature of land was Parti Kadim. The same belongs to Hathwa Raj. The ancestor of the plaintiff took settlement of the aforesaid land on 07.05.1937 after payment of Najrana and since then they have been coming in peaceful possession. The petitioners have been paying rent to the State of Bihar. The Circle Officer, Baikunthpur served notice on 04.12.2011 for vacating the land against which the plaintiff moved before this Court in CWJC No.790 of 2012 and this Court vide order dated 10.02.2012 disposed of the writ petition with a direction to the petitioners to appear before the Circle Officer, Baikunthpur and produce their papers and on such, Circle Officer, Baikunthpur shall pass appropriate order within four months and stay was granted to the petitioners. The petitioners filed show cause but the Circle Officer rejected the claim of the petitioners vide order dated 17.05.2012 and held that the petitioners did not produce any order of Jamabandi and the order passed by the



competent authority mutating the name of the petitioners in Register II. Jamabandi number mentioned on rent receipts given by the petitioners is not found in Register II. The petitioners thereafter filed Title Suit No.475 of 2012. During the pendency of the suit, petitioners also filed application on 20.07.2015 under Order 39 Rule 1 and 2 read with Section 151 C.P.C. for grant of injunction restraining the defendants from constructing Polytechnic college over the disputed land. The petitioners filed CWJC No.5593 of 2015 before this Court and this Court vide order dated 13.07.2015 dismissed the writ petition with liberty to the petitioners to press the petition for grant of injunction in the suit filed by the petitioners. The petitioners pressed the application for grant of injunction but the learned Sub Judge XV vide order dated 31.01.2017 dismissed the injunction petition of the petitioners holding that the order of the Circle Officer shows that petitioners did not produce any documents to show that the lands were mutated in their names and there is no holding number in Register II. The rent receipts produced by Sakaldeep Singh, the ancestor of the petitioners shows that Jamabandi No.149/33 was written but no such Jamabandi was found in Register II. The Circle Officer found that the rent receipts are forged and fabricated. Considering the facts, learned Sub Judge found no



prima facie case in favour of petitioners and the petitioners got no irreparable loss, accordingly, rejected the petition for grant of injunction. The petitioners filed Misc. Appeal against the order dated 31.01.2017 passed in Title Suit No.475 of 2012 but the learned District Judge also rejected the appeal of the petitioners confirming the order of learned Sub Judge refusing the prayer for injunction.

Mr. Binod Kumar Singh, learned counsel for the petitioners submits that when Land Encroachment Act, case was initiated by the Circle Officer. The petitioners appeared before the Circle Officer and filed all the documents showing that the names of the petitioners and others were mutated in Register II on the basis of the settlement made by Hathwa Raj with regard to the disputed lands in the year 1937. It is submitted that Circle Officer without considering the documents of the petitioners ordered for removal of the encroachment from the public land and the petitioners filed title suit for declaration of title and confirmation of possession but in the meantime, the petitioners have been dispossessed from a portion of the land measuring 5 acres for construction of Polytechnic. The rest of the lands are still in possession of the petitioners. It is further submitted that learned Sub Judge has illegally held that petition for injunction is barred



under Section 16 of the Bihar Public Land Encroachment Act. Section 16 of the Act bars the jurisdiction of the Civil Court against the order passed under the Public Land Encroachment Act but the petitioner has filed the suit for declaration of title and confirmation of possession. The petitioners have got prima facie title over the land by virtue of long standing possession and payment of rent. The balance of convenience also lies in favour of the petitioners but the learned Sub Judge as well as learned District Judge failed to appreciate this aspect of the matter and dismissed the petition.

Contending the submission of the learned counsel for the petitioners, Mr. Sajjid Salim Khan, learned S.C.25 submits that from the order of the Circle Officer, the entire case is clear. The land was recorded in the cadastral survey as Gairmajarua Aam Parti Kadim. Even during the revisional survey, the land was recorded in the name of Govt. of Bihar as Gairmajarua Aam. The petitioners appeared before the Circle Officer and only produced some rent receipts. On rent receipts, Jamabandi No.149/33 was mentioned but such Jamabandi was not found entered in Register II. The Circle Officer was found that the petitioners did not produce any order of the competent authority mutating their names on the basis of the settlement alleged to have been obtained by the



petitioners from Hathwa Raj and on such, Circle Officer came to the conclusion that the rent receipts produced by the petitioners are forged and fabricated. The lands are duly mentioned in the name of State of Bihar and accordingly, directed the petitioners to remove the encroachment under the Bihar Land Encroachment Act. The disputed land has already been vacated on 18.11.2012. The petitioners did not file any appeal against the order of the Circle Officer and, therefore, the order of Circle Officer directing the petitioners to vacate the land became final. It is submitted that learned Sub Judge and learned District Judge having considered all these facts that the petitioners have no prima facie case and they would not suffer any irreparable loss, dismissed the petition of the petitioners and the order does not require any interference.

On the basis of submission of both sides, one and only question arises for consideration “whether the orders of Sub Judge and District Judge suffer from any jurisdictional error or material irregularity?”

Admittedly, the land encroachment proceeding was initiated against the petitioners in Misc. Case No.3 of 2011-12 and the petitioners were directed to vacate the land encroached upon by the petitioners. The petitioners filed CWJC No.790 of 2012 in this Court and this Court vide order dated 10.02.2012 directed the



petitioners to appear before the Circle Officer and produce all relevant records showing their title and possession over the lands in question. The Circle Officer after hearing the petitioners passed order on 18.05.2012 directing the petitioners to vacate the land encroached upon by them as the land belongs to the State of Bihar. From perusal of order of Circle Officer, it transpired that petitioners simply produced the rent receipts but no return filed by the ex-landlord showing the settlement of the land in favour of the ancestor of the petitioners nor any order of the competent authority mutating the names of the petitioners in the record of right was filed and the land found recorded as Gairmajarua Malik Parti Kadim and even in revisional survey, the land was recorded in the name of State of Bihar and nature of land was the same as Gairmajarua Aam Parti Kadim. Accordingly, the Circle Officer directed the petitioners to vacate the land and Circle Officer got the land vacated on 18.11.2012. The petitioners did not file any appeal as provided under the Public Land Encroachment Act before the competent authority and filed Title Suit No.475 of 2012 for declaration of title and confirmation of possession. I find that both the courts have considered all the materials on record and found that the petitioners have got no prima facie case for grant of injunction and the petitioners shall not suffer any irreparable loss.



It appears from the records that the petitioners have not produced any orders showing their names mutated in the record of rights. Therefore, I find no jurisdictional error or illegality in the order refusing the prayer for injunction. Accordingly, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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