

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15203 of 2012

=====

Bhola Sah (60 years) Son Of Late Sita Ram Sah Resident Of Village- Nawka Tola, Mahui, P.O.- Mahui, P.S. Ramnagar, Via Bagaha, Distt.- West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Circle Officer, Ramnagar Circle, West Champaran
3. The Sarpanch, Gram Kachahari, Mahui, Ram Nagar Block, West Champaran
4. Diwakar Upadhyay Son Of Amresh Upadhyay R/O Village- Nawka Tola, Mahui, P.O.- Mahui, P.S. Ramnagar, Via- Bagaha, Distt.- West Champaran

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Sanjay Kr Ghoshravey, Dr Anand Kr, Advs
For Respondent No 4	:	M/s Dhanendra Chaubey, Milind Kr Mishra, Advs
for the S t a t e	:	Mr Ashok Kumar Gupta, AC to GP X

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 06-11-2018

The petitioner has challenged the order dated 20.02.2009 passed by the Sarpanch, Mahui Gram Kutchery, Ram Nagar, West Champaran in Case No 30 of 2008. The Sarpanch has directed the petitioner to vacate the lands which the applicant before the Gram Kutchery alleged was encroached by the petitioner without having any right, title over the lands. The petitioner has also challenged the order passed by the First Appellate Authority dated 09.05.2009 in First Appeal No 1 of 2009 whereby and where under the Full



Members of the Gram Kutchery, Mahui have rejected the appeal filed by the petitioner. The second appellate order dated 30.05.2012 passed in Second Appeal No 1 of 2009 affirming the directions issued by the Sarpanch of the Gram Panchayat has also been challenged.

2 In the complaint, respondent No 4 has alleged that the petitioner has encroached upon certain lands of the Ram Janki Temple without having any right over the said lands. On such an application, the Gram Kutchery has passed an order removing the petitioner's possession over the said lands. Mr Sanjay Kumar Ghoshravey, learned counsel for the petitioner submits that the order passed by the Gram Kutchery has the effect of deciding the right to possess the lands in question. Such an adjudication touching upon the title of the lands was beyond the competence of the Gram Kutchery.

3 Learned counsel appearing for private respondent No 4 has tried to sustain the order. He submits that the petitioner has wrongfully encroached upon the said lands. He submits that, in the circumstances, the Gram Kutchery was well within its jurisdiction to pass the order dated 20.02.2009 in Case No 30 of 2008. Learned counsel for the private respondent has also handed over a xerox copy of the complaint submitted by the private



respondent before the Gram Kutchery. The same has been kept on record. Bare perusal of the complaint shows that the private respondent has made an assertion before the Gram Kutchery that the petitioner's possession over the lands in question was without any right and, thus, illegal.

4 Whether the petitioner had any right to possess the land in question, or whether his possession was illegal can only be decided by examining the right, title and interest of the petitioner vis-a-vis of the private respondent.

5 Section 110 of the Panchayat Raj Act, 2006 (for brevity, *the Act*) does not contemplate such a jurisdiction in the Gram Kutchery. The power to remove encroachments, as alleged by private respondent No 4, does not vest in the Gram Kutchery exercising jurisdiction under Section 110 of the Act. Even otherwise, the scope of Section 110 of the Act does not include determination of complicated issues of law and title, which has been raised by private respondent No 4 in the writ petition, filed before the Gram Kutchery.

6 The order dated 20.02.2009 passed by the Sarpanch, Mahui Gram Kutchery, Ram Nagar, West Champaran exercising jurisdiction under Section 110 of the Act is, therefore, grossly illegal and without jurisdiction and quashed. The order dated



09.05.2009 passed in the First Appeal as well as the order dated 30.05.2012 passed in the Second Appeal by Sub Judge II, Bagaha, West Champaran are, therefore, also unsustainable and quashed as they only affirm the order passed by the Gram Kutchery, which this Court has already held to be illegal and without jurisdiction.

7 In the aforesaid circumstances, the writ petition stands allowed.

(Dr Ravi Ranjan, ACJ)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2018
Transmission Date	NA

