

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2709 of 2018

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Ramshray Prasad @ Ramshray Raut Son of Kdasi Mahto Resident of Village
- Shankardih, P.S. - Parwalpur, Dist - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Revenue Department, Government of Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. Collector, Nalanda at Biharsharif, Dist - Nalanda.
5. Sub Divisional Officer, Hilsa, Nalanda.
6. Circle Officer, Parwalpur, Dist - Nalanda.
7. Prasadi Mahto Son of not known to the petitionr Resident of Village -
Shankardih, P.S. - Parwalpur, Dist - Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sharma
For the Respondent/s : Mr. Md.Khurshid Alam -Aag12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 26-06-2018

Heard learned Counsels for the petitioner and the
respondent-State.

Since the Writ application was registered on
12.02.2018, but no counter affidavit has been filed till date and
in view of the nature of order this Court intends to pass, this
Court is neither inclined to adjourn the matter nor inclined to
issue notice to private Respondent No.7.

The present writ application has been filed for
quashing of the order dated 14.10.2016/18.11.2016, passed by
the Respondent No.6, the Circle Officer, Parwalpur in



Encroachment Case No.02 of 2016-17, as contained in Annexure-3, whereby, the Circle Officer, arrived at a finding that the petitioner has encroached upon 18 feet of 'Gair Majarua Aam Land', appertaining to Revenue Thana No. 146, Khata No.941, Plot No.562, situated in Mauza -Sankar Dih, District of Nalanda, which is used as pathway by the public at large. Further prayer has been made for quashing of order dated 03.12.2016/11.10.2017, as contained in Annexure-3, passed by the Circle Officer, Parwalpur, in Encroachment Case No.02 of 2016-17, whereby, the petitioner has been directed to remove the encroachment by 28.10.2017, failing which it was directed that it will be removed by administration and the cost of removal will be realize from the petitioner.

It is submitted by learned counsel for the petitioner that the measurement was not made in presence of the petitioner and before the measurement being done no separate notice was issued to him.

Learned AC to AAG-12 submits that the order under challenge is appealable under Section 11 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act').



The High Court under Article 226 of the Constitution of India has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions, one of which is that, if an effective and efficacious remedy is available, then the jurisdiction under Article 226 of the Constitution of India cannot be exercised, but the availability of alternative remedy does not operate as a bar in certain circumstances, such as, enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge as has been dealt in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1. paragraph no. 15 reads as follows:-

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction.

But the alternative remedy has



been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field”.

However, keeping in view the fact that a house under Indira Aawas Scheme, has been constructed over the land in question, the petitioner is given liberty to prefer an appeal before the appropriate authority within a period of four weeks from the date of receipt/production of a copy of this order.

It is expected from the Appellate Authority that if any appeal is filed along with an application for condonation of delay, the same may be considered in view of the fact that the petitioner was pursuing his remedy before this Court since 12.02.2018.



Let status quo be maintained with regard to residential house of the petitioner situated over the land in question, till the matter is heard and adjudicated by the Appellate Authority.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

