

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12740 of 2018

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Sharda Kahar, aged 70 years, Son of Ram Swaroop Kahar, Resident of
Village- Bhadaula, P.S.- Kudra, District- Kaimur Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Collector-cum-district Magistrate, Kaimur (Bhabhua)
2. The District Magistrate-cum-Collector, Kaimur Bhabhua.
3. The Sub-Divisional Officer, Mohania, Kaimur, Bhabhua.
4. The Circle Officer, Kudra, Kaimur.
5. The S.H.O., Kudra Police Station, Kaimur.
6. Gopal Sharma, Son of Late Sheo Sharma,
7. Vijay Sharma, Son of Late Sheo Sharma,
8. Harendra Sharma, Son of Late Satya Narayan Sharma,
9. Santosh Sharma @ Dablu Sharma, Son of Late Satya Narayan Sharma,
10. Nathuni Sharma, Son of Late Sheopujan Sharma,
11. Jagmohan Sharma, Son of Late Jagdish Sharma,
12. Chandrakala Singh, Son of Late Nagina Singh,
13. Kamla Singh, Son of Late Nagina Singh, All are resident of Village- Bhadaula, P.S.- Kudra, District- Kaimur Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Babu Nandan Prasad, Advocate
For the Respondent/s	:	Mr. Majid Mahboob Khan, A.C. to AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-03-2019

Heard Shri Baxi S.R.P. Sinha, learned senior
counsel for the petitioner and Shri Majid Mahboob Khan,
Assistant Counsel to Additional Advocate General No. 12 for



the State of Bihar.

2. This Public Interest Litigation has been filed contending that Plot Nos. 757 and 758 that are recorded as Gairmajarua Aam in favour of the State and was being utilized for the celebrations of Durga Puja by the villagers as a common ground came to be encroached upon by the Respondent Nos. 6 to 13. Proceedings under Section 133 Cr.P.C. were initiated in the year 2004 and an order was passed for removal of encroachment on 5th October, 2004, against which a Criminal Revision was filed that was dismissed on 23rd of June, 2011.

3. The contention of the petitioner is that the contesting respondents thereafter vacated the land but have again encroached upon the same in the year 2017. It is for this reason that this Public Interest Litigation has been filed calling upon the respondent State authorities to get the land vacated.

4. There is no evidence in support of the averment made in Paragraph-9 about the land having been vacated by the encroachers and then again having been encroached upon by them in spite of the earlier orders which have become final under Section 133 Cr.P.C.

5. We are of the considered opinion that if the order is being disobeyed and is a continuing cause of action, then in



that event, the petitioner can approach the same Magistrate for execution of the said order in the event the encroachers are the same.

6. If, however, different persons have encroached upon the said land, they are also bound to comply with the earlier orders and in that event it will be open to the petitioner to approach the Respondent No. 3 along with a certified copy of this order, who shall ensure taking of an appropriate action after ascertaining the facts as alleged by the petitioner and after putting the concerned parties to notice, as expeditiously as possible, preferably within a period of three months.

7. The writ petition stands disposed of with the said observation.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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CAV DATE	
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