

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6143 of 2017

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Ram Bhagat Mahto, Son of Shukhdeo Mahto, Resident of Village-
Maujampur, P.S.- Bahera, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms and Revenue, Government of Bihar, Patna
2. The Secretary, Department of Home, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The Sub-Divisional Officer, Benipur, District- Darbhanga.
5. The Circle Officer, Benipur, District- Darbhanga.
6. The S.H.O. Benipur Police Station, District- Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Jha, Advocate
For the Respondent/s	:	Mr.Rishi Raj Sinha, S.C.19 with M/S Akhilesh Kumar Sinha, Archana Prasad, AC to S.C. 19

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. ORDER

10 23-09-2019 The writ application has been filed under Article 226 of the Constitution of India for quashing the notice dated 15.10.2016 issued in Encroachment Case No. 14 of 2016-17 issued by Circle Officer, Benipur and also to declare the action of demolition of the house of the petitioner in consequence of the said notice is illegal and for further issuance of writ in the nature of mandamus to direct the respondents to pay the compensation for illegal demolition of his residential house.

The case of the petitioner, in short, is that the petitioner has got the settlement of land in Khata No. 479, Khesra No. 2236, measuring an area of 3 decimals, situated at Thana No. 168, Mauza Mauzampur within the circle of Benipur, P.S. Benipur, District



Darbhanga by order passed in Settlement Case No. 174K/92 and constructed residential house and residing therein since long and paying rent also. Further case is that a notice was issued to the petitioner in Encroachment Case No. 14/16-17 on 15.10.2016 (Annexure-3) to which petitioner filed his reply referring to the order 13.5.2009 in Settlement Case No. 174K/92 (Annexure-2) and requested to drop the proceeding. The reply is annexed as Annexure-4 to the writ application. Further case is that the Circle Officer again issued notice to the petitioner on 25.1.2017 (Annexure-5) to produce the decree passed in pursuance of order dated 13.5.2009 (Annexure-2), to which petitioner filed representation before the District Magistrate, Darbhanga on 8.2.2017 (Annexure-6) for issuance of decree but that of no avail and finally his house was demolished on 24.3.2017 which is against the provisions contained in Bihar Public Land Encroachment Act as well as Bihar Tenancy Act.

A counter affidavit has been filed on behalf of State stating that the Encroachment Case No. 174K/92 was initiated against the petitioner under Bihar Public Land Encroachment Act and notice was issued to the petitioner and as petitioner has not submitted the decree passed in pursuance of settlement order (Annexure-2), the encroachment was removed. Counter affidavit further shows that earlier a complaint was filed before the Sub-Divisional Public Grievance Redressal Officer, Benipur with respect to the encroachment of public road by the petitioner and other encroachers



also which was sent to the Circle Officer, Benipur, who called for joint inspection and measurement report from Halka Karamchari and Circle Inspector and they have submitted report which shows that petitioner and nine other persons were found encroachers of public road and on being satisfied with the report the Circle Officer issued notices to the petitioner and others and as stated above the petitioner filed his reply to the notice but has not filed the decree prepared in Title Suit No. 174K of 1992 as required under Rule 32 of Survey Technical Rules Part-II, as such the judgment of the above suit (Annexure-2) is redundant. Hence, following the legal procedure the encroachment was removed.

The petitioner has also filed rejoinder to the counter affidavit reiterating his stand that in spite of decree issued in favour of 3 decimals of land in R.S.P. No. 236 by virtue of order passed in Case No. 174K of 1992 under Section 106 of Bihar Tenancy Act by the Assistant Settlement Officer, Benipur the same was not considered by the respondent authority and his house standing over that plot was demolished.

In this case the record of the encroachment proceeding was called for by order dated 3.8.2017, which is on the record.

It further appears that two supplementary counter affidavits have been filed by the State respondents and in nut shell it appears that the stand of the State is that as the petitioner has not filed the copy of the decree passed in Title Suit No. 174K of 1992 as



required under Rule 32 of Survey Technical Rules Part-II the judgment passed in the above title suit is redundant and infructuous and as such the encroachment made by the petitioner over the public road was removed on 24.3.2017.

A submission has been made by learned counsel for the petitioner that as there is an order of settlement in favour of the petitioner with respect to land in dispute, the same cannot be removed in a summary proceeding.

Having heard both sides and on perusal of the pleadings of the parties as well as on perusal of record of Encroachment Case No. 14 of 1916-17 it appears that on the basis of report of Circle Inspector a proceeding was initiated against the petitioner and other persons and notice (Annexure-3) was issued to the petitioner which has been admitted by the petitioner also. It further appears that petitioner filed his reply (Annexure-4) in pursuance of notice (Annexure-3) claiming the title over the land on the basis of judgment passed in Title Suit No. 174K of 1992 (Annexure-2). It further appears from the record that the copy of the judgment passed in above title suit was sent to the Settlement Officer for verification of the same and Circle Officer, Benipur was informed by Assistant Settlement Officer that the copy of the decree is not made available to him and only after making copy of the decree passed in Title Suit No. 174K of 1992 available to him, further action can be taken. It further appears from perusal of record that a notice (Annexure-5)



was issued to the petitioner to submit decree on 25.1.2017. A categorical stand has been taken by the State that as petitioner has not filed the copy of decree passed in Title Suit No. 174K of 1992, the judgment passed in Settlement Case (Annexure-2) has no value and is of no help to the petitioner under Rule 32 of the Survey Technical Rules Part-II and further learned counsel for the State in course of hearing, has also drawn my attention towards Rule 832 of the Technical Rules of the Settlement Department which also provides that a decree is necessary in every case under Section 106, not dismissed for default of parties and in spite of that copy of the decree has not been produced before the Circle Officer in encroachment case nor before this Court for its perusal. Rather letter of the petitioner to the Collector, Darbhanga (Annexure-6) disclosing that the same has not been prepared. It further appears that no rent receipts with respect to encroached land were produced either before the Circle Officer or before this Court. The Circle Officer by order dated 25.1.2017 ordered that the judgment passed in Title Suit No. 174K of 1992 under Section 106 of Bihar Tenancy Act will not be of any help of the petitioner in absence of the decree and, accordingly, ordered for removal of encroachment and order sheet further disclosed that on 24.3.2017 the encroachment was removed.

It further appears that the above order passed by the Circle Officer under Section 6 as well as 7 of the Bihar Public Land Encroachment Act has not been challenged before the appellate



authority as provided under Section 11 of the Bihar Public Land Encroachment Act, rather petitioner has moved before this Court in writ jurisdiction challenging the same.

As discussed above, though petitioner claims title over the land on the basis of settlement order passed under Section 106 of Bihar Tenancy Act by Assistant Settlement Officer but in absence of any decree prepared in the light of the judgment, the judgment is redundant and petitioner cannot claim any benefit over the same. Moreover, now the encroachment has already been removed.

In such view of the matter, the petitioner has failed to satisfy this Court about his title over the land and he was found to have illegally encroached the public road and, as such structure over the land was demolished vide order dated 25.3.2017 passed in Encroachment Case No. 14/2016-17.

In the above view of the matter, I am not inclined to interfere with the said order. Accordingly, this writ application is dismissed.

L.C.R. be sent back to the Circle Officer at once.

(Vinod Kumar Sinha, J)

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