

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20358 of 2019

1. Shambhu Kumar, aged about 25 years, Male Son of Nagina Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
2. Mukhlal Ram, aged about 55 years, Male, Son of Mohan Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
3. Bharat Ram, aged about 45 years, Male Son of Sita Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
4. Harendra Ram, aged about 28 years, Male Son of Ram Bisar Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
5. Anurag Bhagat, aged about 70 years, Male Son of Late Kishun Bhagat Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
6. Ram Bisar Ram, aged about 60 years, Son of Late Sukhdeo Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
7. Naresh Raut, aged about 55 Years, Male Son of Late Lalji Raut Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
8. Narayan Raut, aged about 60 years, Male Son of Late Shankar Raut Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
9. Govind Patel, aged about 20 years, Male Son of Late Manager Patel Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
10. Sitaram Raut, aged about 65 years, Male Son of Late Lalji Raut Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
11. Sujay Ranjan, aged about 30 years, Male, Son of Late Sachitanand Prasad Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
12. Chatu Manjhi, aged about 42 years, Male Son of Banu Manjhi Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
13. Sanjit Patel, aged about 35 years, Male Son of Ram Bharos Patel Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
14. Raj Kishor Sah, aged about 32 years, Male, Son of Ramjit Prasad Arya Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
15. Sunil Ram, aged about 26 years, Male Son of Babulal Ram Resident of



- Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
16. Kinai Ram, aged about 42 years, Male Son of Late Ramyad Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 17. Manjeet Kumar, aged about 42 years, Male Son of Ram Dayal Ram Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 18. Shiv Shankar Sah, aged about 27 years, Male Son of Lakshman Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 19. Saheb Sah, aged about 43 years, Male Son of Late Chandrika Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 20. Harilal Mahto, aged about 50 years, Male, Son of Late Bijli Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 21. Ram Babu Paswan, aged about 24 years, Male Son of Late Shankar Paswan Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 22. Hari Hajra, aged about 45 years, Male Son of Late Deman Hajra Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 23. Mahip Kumar Sah, aged about 34 years, Male, Son of Pramod Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 24. Nageshwar Prasad, aged about 42 years, Male Son of Bharav Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 25. Ganga Sah, aged about 61 years, Male, Son of Bachan Sah Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 26. Banshi Thakur, aged about 56 years, Male Son of Bangali Thakur Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 27. Mankeshwar Thakur, aged about 63 years, Male Son of Chattu Thakur Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 28. Suganti Devi, aged about 45 years, Female Daughter of Rajaram Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 29. Vyas Prasad Kushwaha, aged about 35 years, Male Son of Ramlal Bhagat Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
 30. Umrawati Devi, aged about 45 years, Male Daughter of Babu Lal Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah,



District- West Champaran, Bihar.

31. Umesh Mahto, aged about 44 years, Son of Late Rama Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
32. Suresh Mahto, aged about 36 years, Male Son of Manshi Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
33. Nakchedi Mahto, aged about 62 years, Male Son of Late Kalicharan Mahto Presently, Pujari of Mahabiri Akhara Jhanda Mela-cum-Shanti Samittee, Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran.
34. Ram Chandra Mahto, aged about 75 years, Male, Son of Late Sukat Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
35. Shahmamad Miya, aged about 34 years, Male Son of Late Juma Miya Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
36. Jado Maho, aged about 61 years, Male Son of Late Rekha Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
37. Lakshman Mahto, aged about 51 years, Male, Son of Late Kanai Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
38. Raj Kishor Mahto, aged about 34 years, Male Son of Govardhan Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
39. Bal Kishun Mahto, aged about 81 years, Son of Late Dyali Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
40. Amar Kishore Paswan, aged about 37 years, Male Son of Late Yogendra Paswan Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
41. Anil Baitha, aged about 36 years, Male Son of Late Biran Baitha Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
42. Manshi Mahto, aged about 62 years, Male Son of Bhaurik Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
43. Kashi Mahto, aged about 60 years, Male Son of Kodo Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
44. Kanhaiya Mahto, aged about 31 years, Male Son of Madan Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
45. Shanti Devi, aged about 33 years, Male Son of Dhanilal Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District-



West Champaran, Bihar.

46. Kaushilya Devi, aged about 70 years, Female Daughter of Shiv Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
47. Ram Surat Bhagat, aged about 42 years, Male Son of Late Jhapas Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
48. Rabindra Mahto, aged about 30 years, Son of Late Mahendra Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
49. Dhurendra Prasad Chaurasiya, aged about 42 years, Son of Late Vishwanath Bhagat Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
50. Madan Mahto, aged about 50 years, S/o Late Bhorik Mahto Resident of Village- Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran, Bihar.
51. Mahabiri Akhara Jhanda Mela-cum-Shanti Samittee, Mahna Gani, P.O.- Mahna Gani, P.S.- Muffasil Bettiah, District- West Champaran through its Chairman, Dhurendra Prasad Chaurasiya, aged about 42 years, male, Son of Late Vishwanath Bhagat.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Science and Technology, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Bailey Road, Patna- 8000015.
2. The Department of Science and Technology, Government of Bihar, Patna through its Principal Secretary, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Bailey Road, Patna- 800015.
3. The District Magistrate, Bettiah.
4. The Sub Divisional Officer, Sadar Bettiah.
5. The Circle Officer, Majhaulia, Bettiah, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar and Ms. Vagisha Pragya Vacaknavi, Advocate
For the State	:	Mr. Ajay, GA 5 Mr. Pratik Kumar Sinha, AC to GA 5

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 17-12-2019



Heard learned counsel for the petitioners and learned GA 5 for the State.

2. The petitioners have moved the Court for the following reliefs:

“1. That this is a writ petition on behalf of the petitioners for issuance of a writ of prohibition or writs in the nature thereof or any other appropriate writs/orders/directions for prohibiting the respondents from encroaching upon land situated in Mauza-Mahna Gani, Thana No. 203, Circle-Majhauria, District- West Champaran, comprised in Khata No. 3, Plot No. 2978, area 3 bigha 3 katha with boundaries in North-Pitch Road, South-Nagendra Mahto and others; East-part of Plot No. 2978; West- Mansi Mahto and others.

2. That the petitioners are devout and members of Mahabiri Akhara Jhanda Mela-cum-Shanti Samittee, Mahna Gani, P.O. Mahna Gani, P.S. Muffasil Bettiah, District-West Champaran who is represented through its Chairman-Petitioner No. 49-Dhurendra Prasad Chaurasiya. They are citizens of India and as such are invoking the extraordinary original writ jurisdiction of the Hon'ble High Court for the reliefs prayed in this writ petition.”

3. At the outset, learned counsel for the State submitted that the petitioners are stranger to the cause. It was submitted that even as per pleadings in the writ petition, the land was settled by the Bettiah Raj to the family of Raj Guru, who came in possession. It was submitted that no heirs of the said Raj Guru family is petitioner before the Court. Learned counsel submitted that even otherwise the area which has been used by the authorities to



construct a Government Polytechnic is on Government land and not private land. It was submitted that in any view of the matter, upon any objection to be raised by the landholder, who is not before the Court, the authorities would have justified their stand and in the present case also at the time when the project was being implemented, there was no objection from any recorded landholder.

4. Learned counsel for the petitioners submitted that the petitioners are the locals who are interested in the Mahabiri Akhara retaining its character and the Government is encroaching on the land by construction of the Polytechnic. However, on a query of the Court as to why the person in whose favour the land may have been settled or the recorded tenant has not come to the Court, learned counsel submitted that the public are utilizing the space, including their being a temple and, thus, they have the locus to maintain the present writ application. It was submitted that the original landholder had compromised the matter and the petitioners have a right to contest the case. It was submitted that the State authorities cannot disposses the petitioners from the land without following the due process of law.

5. Having considered the matter, the Court finds substance in the contention of learned counsel for the State.



Further, in essence, the present case is for a direction to the State not to encroach upon *raiya* land, as claimed by the petitioners. For this, in the considered opinion of the Court, the dispute has to be ascertained on the basis of ground reality after proper demarcation and adjudication of the respective rights of the parties. From the entire pleadings, the Court does not find any document which would establish the right of any of the petitioners on any particular area. There may be documents to indicate some order in their favour, but the nature of the present writ petition is only with regard to whether their private land on which they have right title and of which they are in possession is being encroached by the authorities for construction of a Government Polytechnic. This being the position, the remedy available to the petitioners would be the Civil Court of competent jurisdiction where matters can be thrashed out on facts after recording evidence. The Lower Court would also be the competent forum which could send a Pleader Commissioner to report with regard to the actual ground position. Thus, in any view of the matter, the issue is based more with regard to adjudication of facts rather than any law involved. Once the correct factual position on the ground with regard to the right and title of a party is established before the Civil Court, then only the question would come as to whether on any portion on



which private rights have been declared by the Court, the Government has made construction without following the due procedure of law, of either acquiring the land or otherwise. However, in the particular facts and circumstances of the present case, such exercise, in the considered opinion of the Court is not appropriate in the present proceeding.

6. Accordingly, the application stands disposed off with liberty to the petitioners to approach the Civil Court with regard to their grievance. It shall always be open to them to pray for any interim injunction, if they feel that their genuine right under the law is being threatened.

(Ahsanuddin Amanullah, J.)

P. Kumar

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