

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23859 of 2019

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Lalkeshwar Prasad Son of Late Bajo Prasad Resident of Village Lohani
Bigha, Police Station Nawada, District- Nawada.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of General Administration, Bihar, Patna.
2. The Additional Chief Secretary, Department of General Administration, Bihar, Patna.
3. The District Magistrate Nawada.
4. Sub- Divisional Magistrate Nawada.
5. The Circle Officer Nawada Sadar, District Nawada.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 03-12-2019 Recently, the Court has noticed a new trend of the litigants approaching this Court, invoking extraordinary writ jurisdiction under Article 226 of the Constitution of India, seeking directions for removal of encroachments from public lands, caused by private persons. Whereas, a few of such grievances appear to this Court to be genuine and bonafide, most of them miserably lack bonafide and genuineness. For the present, I am not commenting on the petitioner's bonafide in filing the present writ application.

2. According to the petitioner, the public land, appertaining to Khata No. 608, Plots No. 933, 934 and 935,



recorded in Khatiyān as *Gairmazarua Aam*, and old Khata No. 609, corresponding to new Khata No. 852, appertaining to Plots No. 1611 and 1612, which are located in Lohani Bigha in the district of Nawada, are lands of the State Government, which have been encroached upon by private persons. It has been alleged that some of the persons have made unauthorized constructions over the said public land. The petitioner is seeking direction for removal of the encroachments.

3. Learned counsel appearing on behalf of the petitioner has drawn my attention to Annexure-5 of the writ application to submit that on an application made by the petitioner, the Officer In-charge of the Police Station has recommended initiation of a proceeding under Section 144 of the Code of Criminal Procedure on 07.04.2019. He has accordingly submitted that in the light of the recommendation made by the Officer In-charge of the Police Station, the factum of encroachment over the public land is within the knowledge of the Sub Divisional Officer and, therefore, steps ought to have been taken by him for removal of the encroachments from public land, which has not been done.

4. It is the petitioner's case, as pleaded in paragraph 5 of the writ application, that encroachment, in question, caused



by the private persons, has adversely affected his ingress and egress in respect of a piece of land, which belongs to him.

5. It is evident from the writ application that the petitioner has not approached any authority for removal of the alleged encroachment from public land. Removal and prevention of encroachment on public lands is governed by the Bihar Public Land Encroachment Act, 1956. Section 3 of the Act empowers the Collector, within the meaning of the Act, either on any application or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land to cause to be served upon such person a notice in the prescribed form requiring him to appear on a date specified and proceed thereafter in accordance with law for removal of encroachments. The provisions under the Act are self-contained and lay down a definite and exhaustive procedure before removal of encroachment from a public land. This Court fails to understand as to why the petitioner, instead of making an application under Section 3(1) of the Bihar Public Land Encroachment Act, 1956, before the Collector under the Act, has been advised to file the present writ application before this Court.

6. Further, the law has been enacted for redressal of



public grievances, namely, Bihar Right to Public Grievance Redressal Act, 2015. If the petitioner had a grievance that his prayer is not being considered by the authorities, he could have approached the Public Grievance Redressal Officer. In addition, in appropriate cases, provision under Section 133 of the Code of Criminal Procedure can be invoked for removal of unlawful obstructions or nuisance from any 'public place', in accordance with the procedure prescribed therein.

7. Ignoring the statutory remedies available to the petitioner, he has filed the present writ application under Article 226 of the Constitution of India for removal of encroachment from the public land, which, in my view, cannot be maintained. The statutory remedy, which the petitioner has, as noticed above, are efficacious.

8. A Division Bench of this Court had the occasion to deal with this aspect in case of *Sanjay Jha vs. State of Bihar and others*, reported in **2016(1) PLJR 248**, paragraphs 26 to 28 reads thus : -

“26. In our view, so far as the present case is concerned, the petitioner has, in the light of what we have discussed above, alternative and efficacious remedy available under the Code of Criminal Procedure, 1973, as envisaged under Chapter X (B) of the Code and the Magistrate, under the said Chapter, has sufficient authority to deal with the situation, as complained by the petitioner in the present writ



application. We do not, therefore, find any reason to exercise extraordinary writ jurisdiction under Article 226 of the Constitution of India in the present facts and circumstances of the case.

27. We do not find any exceptional circumstance in the present case to exercise extraordinary writ jurisdiction, when a legislative statutory enactment provides specific procedure and jurisdiction to deal with a situation, such as, the present one.

28. In the result and for the reasons discussed above, we dispose of the present writ petition with observation that the petitioner shall remain at liberty to invoke the provisions embodied under Chapter X (B) of the Code of Criminal Procedure, 1973 and if he does so, it goes without saying that the concerned Magistrate shall proceed in accordance with law in the light of what have been discussed and held in the preceding paragraphs of this judgment and order.”

9. In my opinion, a writ application, seeking a direction for removal of encroachment from public land, filed before this Court, without exhausting alternative statutory and effective remedies under Section 3(1) the Bihar Public Land Encroachment Act, 1956, Section 133 of the Code of Criminal Procedure and Bihar Right to Public Grievance Redressal Act, 2015, cannot be maintained, unless any exceptional circumstance is made out.

10. This writ application is accordingly dismissed.

11. It goes without saying that the petitioner shall have the liberty to approach appropriate authority in accordance



with law, raising the grievance, which has been raised in the present writ application.

(Chakradhari Sharan Singh, J)

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