

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.451 of 2019

1. Subhash Enterprises, through its proprietor-Subhash Kumar Singh, S/o Late Ram Udit Singh, R/o Village and P.O.- Bijauli, P.S.- Muffasil, Block- Deo, District- Aurangabad.
 2. Maa Enterprises, through its Proprietor Amitabh Ranjan Alok @ Munna Kumar Singh, S/o Sidheshwar Kumar Singh, R/o Mohalla- Veer Kunwar Singh Nagar MG Road, Near Ramdas Seminary, P.S., P.O. and District- Aurangabad.
 3. Vandey Dot Com, through its Proprietor- Kumar Sanoj Singh, S/o Rameshwar Singh, R/o Mohalla- New Area, Near Anugrah Kanya Uchya Vidyalaya, P.S., P.O. and District- Aurangabad.
- Petitioner Nos.1 to 3 are situated in Manish Sinha Shopping Complex, Maharajganj Road, Near Bank of India, Opposite Naga Bigha Road, Aurangabad, Bihar- 824101.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Circle Officer, Aurangabad.
5. The Circle Inspector, Aurangabad.
6. Madhusudan Thakur, Son of Sri Shiv Pujan Thakur, Resident of Village- Karma Bhagwan, P.S. Muffasil Aurangabad, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kr. Singh, Adv. Ms. Vagisha Pragya Vacaknavi, Adv.
For the intervener	:	Mrs. Nivedita Nirvikar, Adv. Mr. Punit Kumar, Adv. Mr. Rohan Sudarshan, Adv.
For the State	:	Mr. Raj Kishore Roy, GP-18

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-03-2020



Heard Mr. Binod Kumar Singh, learned counsel for the petitioners, Mr. Raj Kishore Roy, learned GP-18 for the State of Bihar and Mrs. Nivedita Nirvikar for the intervener respondent no. 6.

2. The petitioners have challenged the notices issued to them dated 23.08.2018 under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') by the Circle Officer, Aurangabad in Encroachment Case No. 09 of 2017-18. They have also challenged the orders dated 20.09.2018 passed subsequent to the said notices, for removal of encroachments from public land, in the said encroachment case, under Section 6(2) of the Act.

3. The notices have been brought on record by way of Annexures to the writ application, from which it can be easily ascertained that they relate to Khata No. 191, Plot No. 263. The claim of the petitioners of their rightful possession over the land in question is based on their 'agreements for rent' with the landlord Manish Kumar Sinha and his wife Prabhawati Sinha. The copies of the rent agreements have also been brought on record by way of Annexures. It is evident from the rent agreements, copies of which have been brought on record, that the same relate to Khata No. 22 Plot No. 324.



4. It has been stated in paragraph-4 of the writ application that the owner of the plot Vinita Sinha @ Nitu Sinha @ Nilu, daughter of Manish Kumar Singh had authorised Manish Kumar Sinha and his wife Smt. Prabhawati Sinha to let out the shops on rent and collect the rent. The shops, according to the petitioners, are situated in Manish Sinha Shopping Complex, Maharajganj Road, near Bank of India, which is owned by said Vinita Sinha. On perusal of the said rent agreements, it transpires that the agreement was valid till 31.05.2011.

5. It is the case of the petitioners, however, that the agreement has renewal clause and on the basis of continuing rent agreement, the petitioners are running shops in the given names and styles. The petitioners, it is being claimed, are in occupation of the shops on rent for more than a decade and are running presently on 'monthly rental basis' (emphasis added). It is further case of the petitioners that there is no encroachment over the said road on Plot No. 263 and there is no hindrance of any kind caused in movement of traffic on road in question. It has further been stated that the public road is at the place located over plots No. 261, 262 and 263 of Khata No. 191 whereas the tenanted premises are on Plot No. 324 of Khata No. 22, which is adjacent south-east to the road running on Plot No. 263. There is an explanation given in



paragraph-7 of the writ application that even if a four wheeler is parked on the road side, there would be no obstruction in movement of any heavy motor vehicle, let alone, the light motor vehicles.

6. Mr. Binod Kumar Singh, learned counsel arguing on behalf of the petitioners has submitted that no notice under Section 3 or notice-cum-order under Section 6(2) of the Act was ever served on petitioners No. 1 and 3 though petitioner no. 2 did receive the impugned notice cum order dated 20.09.2018 through speed post on 12.10.2018. It is the case of the petitioners that the said envelop containing notice dated 20.09.2018 was dispatched on 10.10.2018, whereas 05.10.2018 was the date fixed for vacating the encroachment from the land. There are averments made in the writ application in respect of irregularities in passing of the impugned order and service of notices. Mr. Singh has also drawn my attention to an order of the Circle Officer, Aurangabad dated 16.03.2018 to make out a case that the Circle Officer had earlier found certain premises including the petitioners' shops to be situated on the land of the District Board. It is their case that since the said proceeding was dropped earlier, the subsequent order asking the petitioners to remove encroachment from public land is barred by the doctrine of *res judicata*.



7. It is on an application made by the intervener-respondent that the Encroachment Case No. 09 of 2017-18 was registered. It has been stated on his behalf that Plot No. 263 of Khata No. 191 is a public road which earlier belonged to the District Board and has presently been handed over to the National Highways. He has claimed his ownership over Plot No. 324 under Khata No. 22 and has stated that at no point of time the intervener-respondent had ever entered into any agreement of rent with the petitioners.

8. A counter affidavit has been filed on behalf of the respondents-State of Bihar stating therein that the land in question bearing Khata No. 191, Plot No. 263 is recorded C.S. *khatian* in the name of Zila Parishad over which the public road was constructed earlier by Zila Parishad, Aurangabad and presently the road has been notified as State Highway-98, and is being managed and maintained by RCD Division-1, Aurangabad. A proceeding was initiated for removal of encroachment in accordance with the provisions of the Act and since despite service of notice, the encroachers failed to appear, the impugned order under Section 6(2) of the Act was passed.

9. The averments made in the counter affidavit filed on behalf of the State of Bihar and those made in the intervention



application have not been denied by the petitioner by filing any reply or rejoinder. The said averments have thus remained uncontroverted.

10. It can be noticed from the facts mentioned hereinabove, that whereas the encroachment proceeding was initiated for removal of encroachment from public land in the nature of public road appertaining to Plot No. 263 of Khata No. 191, the petitioners claim their right to occupy and run the shop premises on the basis of their rent agreements entered into with one Manish Kumar Sinha in 2008. The said Plot No. 324 of Khata No. 22 is adjacent to Plot No. 263 of Khata No. 191. The petitioners have not disputed that Plot No. 263 of Khata No. 191 is not a public land.

11. When the matter was heard on 18.02.2020, the Court had desired appearance of the landlord of the petitioners before this Court, which was assured by the learned counsel for the petitioners. It may be noted that according to the petitioners, Manish Kumar Sinha and his wife Prabhawati Sinha were their landlords who were authorised by the land owner to settle the shops on rent.

12. When the matter was taken up, subsequently, on 26.02.2020, learned counsel for the petitioners informed this Court



that said Manish Kumar Sinha had died nearly 4-5 years ago and his widow Prabhawati Sinha is also no more. It is reiterated by the Court at this juncture that the entire claim of the petitioners of being in possession over the land in question is based on their rent agreement with Manish Kumar Sinha and Prabhawati Sinha.

13. In response to a query made by this Court as to whom the petitioners were paying their rent, Mr. Singh, learned counsel for the petitioners, has submitted that certain advance was paid to the landlord from which the deductions were being continuously made against rent, by the landlord. In response to another query, as to when the rent agreement came to an end in 2011, how were the petitioners claiming to be the tenants to occupy the plots in question, it has been argued that the rent agreement had a renewal clause, in Clause-13 of the rent agreement and on that strength the petitioners were continuing as tenants.

14. I have perused Clause-13 of the rent agreement which reads that with the consent of both the parties in writing, the rent agreement can be renewed after expiry of three years. Mr. Singh has submitted that since the petitioners continued even after expiry of the period of agreement, a month to month tenancy came



into existence and in that capacity the petitioners were occupying the premises in question.

15. The averments, which have been made in the writ application and the facts which are admitted, go to suggest that this writ application is based on falsehood. The petitioners obtained an interim order of this Court on 09.01.2019 on the plea that they were running shops in the rented premises upon Khata No. 22, Plot No. 324 in pursuance of agreements entered into between them and the land owner. The petitioners do not know whether their landlord is/ are alive or not. It has already been noticed that the specific case of the petitioners in the writ application is that they were in occupation of the shops as tenants and were running the shops presently on 'monthly rental basis'. This statement is patently false for the reason that the petitioners were admittedly not paying any monthly rental to persons who, according to them, were the landlords.

16. Be that as it may, the petitioners cannot stake any claim in respect of Plot No. 263 of Khata No. 191, which is admittedly a public land.

17. In my opinion, it was obligatory on the part of the petitioners to have disclosed about the death of the persons whom they claimed to be their landlords. The Court is unable to accept



any plea that a tenant would not be knowing about the death of his landlord for years together (in the present case at-least 4-5 years, as stated by Mr. Singh at the Bar, on the instructions of the petitioners). This falsehood and concealment on the part of the petitioners, in Court's opinion, is deliberate to obtain favourable orders from this Court. The Courts have been consistently reminding as to what should be the conduct of a litigant who approaches the Court, its extraordinary jurisdiction under Article 226 of the Constitution of India. A litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final, held Supreme Court in case of ***Dalip Singh vs. State of U.P. and others [(2010)2 SCC 114]***.

18. Taking note of the Supreme Court's decision in case of ***Ramjas Foundation and others vs. Union of India and others [1993 Suppl. (2) SCC 20]***, ***Nooruddin vs. (Dr.) K.L. Anand [(1995) 1 SCC 242]*** and ***Ramniklal N. Bhutta and another vs. State of Maharashtra and others [(1997) 1 SCC 134]***, the Supreme Court in case of ***V. Chandrasekaran and others vs. The Administrative Officer T.N. Housing Board and others [(2012) 12 SCC 133]*** has held that whenever a person approaches a court of equity, invoking its extraordinary jurisdiction, it is expected



that he would approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. One who seeks equity must do equity, is the well accepted principle and has been reiterated in catena of judicial pronouncements.

19. A petition or affidavit containing misleading and/or inaccurate statements, only to achieve an ulterior purpose, amounts to an abuse of the process of the court, the Supreme Court held in case of *V. Chandrasekaran* (supra).

20. In my view, the petitioners have misled this Court by raising a false claim that they were tenants of Manish Kumar Sinha and Prabhawati Sinha who were admittedly dead long back. This fact was not disclosed in the writ application which leads to one and only irresistible conclusion that they were knowing facts well and knowingly made a false statement to support their claim of being a tenant and deliberately concealed about the deaths of their landlords. The petitioners, in my view, have not approached this Court with clean hands and they have abused the process of this Court by filing the present writ application. I strongly deprecate the conduct of the petitioners.

21. Considering the above, I do not find any merit in this application. For the reasons recorded in the discussions above, this application is dismissed with a cost of Rs. 15,000=00 (5,000=00



for each of the petitioners) to be recoverable by the Collector, Aurangabad as arrears of land revenue from them. Consequently, the interim order stands vacated.

All interlocutory applications stand disposed of.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2020
Transmission Date	NA

