

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6385 of 2013

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1. Sanjay Kumar Singh @ Sanjay Singh and Ors Son Of Late Ambika Singh Resident Of Village Sanpura, Police Station Simri Bakhtiyarpur, District Saharsa
 2. Dhananjay Kumar Singh Son Of Late Ambika Singh Resident Of Village Sanpura, Police Station Simri Bakhtiyarpur, District Saharsa
 3. Ajit Kumar Singh Son Of Late Ambika Singh Resident Of Village Sanpura, Police Station Simri Bakhtiyarpur, District Saharsa
 4. Indradeo Singh Son Of Late Mahendra Singh Resident Of Village Sanpura, Police Station Simri Bakhtiyarpur, District Saharsa

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Circle Officer, Simri Bakhtiyarpur, Saharsa
3. Sri Shiv Darshan Singh Son Of Late Ramji Singh Resident Of Village Sanpura, Police Station Simri Bakhtiyarpur, District Saharsa

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Singh
For the Respondent/s : Mr.Rajeev Kr. Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

12 13-01-2020 The petitioners are seeking quashing of an order dated 15.01.2013 passed in Encroachment Appeal Case No. 25 of 2012 by the District Magistrate, Saharsa, upholding the order dated 17.11.2012 passed in Encroachment Case No. 2 of 2007-08 by the Circle Officer, Simri Bakhtiyarpur, wherein the petitioners have found to have encroached upon a public land in the nature of *Rasta*, admeasuring 50 Kari x 15 Kari. The said order dated 17.11.2012 has also been challenged in this case.



2. This is to be noticed that respondent No.3 had made a complaint regarding encroachment having been made over the public land in question, leading to registration of Encroachment Case No. 2 of 2007-08, whereafter notices were issued to the petitioner Nos. 1,2 and 3, who appeared in the encroachment case and filed their objections. It appears that the report of the Circle Amin supported the allegation of encroachment over the public land. The correctness of the said report was challenged by the petitioners before the Circle Officer. On the objection filed by petitioner Nos. 1,2 and 3, the Circle Officer called for a report from the revenue Karamchari after measuring the land, alleged to have been encroached. Respondent No.3, in the meanwhile, filed a writ application before this Court, giving rise to CWJC No. 12390 of 2007, seeking direction to the respondents to remove the encroachment from public land. The said writ petition was disposed of by an order dated 10.02.2012 with a direction to the Circle Officer, Simri Bakhtiyarpur to conclude the Encroachment Case No. 2 of 2007-08, in accordance with law after following the procedure laid down under the Bihar Public Land Encroachment Act, 1956 within three months.

3. Thereafter, the Circle Officer, Simri Bakhtiyarpur



vide letter dated 18.05.2012 issued under Section 6(2) of the Bihar Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') directed the petitioners to remove the encroachment latest by 02.06.2012. The petitioners, thereafter, filed an objection to the said notice dated 18.05.2012, which was rejected on 31.05.2012. They thereafter approached the District Magistrate, Saharsa by filing appeal giving rise to Encroachment Appeal No. 23 of 2012. The District Magistrate, Saharsa set aside the order/notice dated 18.05.2012 and directed the Circle Officer, Simri Bakhtiyarpur to pass an order in accordance with law, after giving both the parties opportunity of hearing. This is an admitted fact that thereafter the Circle Officer issued notice on 26.10.2012, which was duly received by petitioner No.1 on 03.11.2012. By the said notice, the said petitioner was required to be present on 05.11.2012 at the time of measurement of the alleged encroachment. Next date of hearing was fixed on 14.11.2012. It is the petitioners' claim that the said letter dated 26.10.2012 is antedated. It is his further case that no time was fixed for measurement in the said notice dated 26.10.2012. It has been stated in the writ petition that after receiving the said notice dated 26.10.2012, the petitioner filed an objection petition dated 03.11.2012 before the Circle



Officer, mentioning therein that all documents were in custody of petitioner No.4, who is uncle of petitioner No.1 and the guardian in the family. He further informed the Circle Officer that the point from where the measurement was to begin was approximately 1-15 Kilo meter away from the place of alleged encroachment and the land in between was submerged with water and that rice crop was standing in the fields. Therefore, it would be difficult to obtain correct measurement with the help of *kari*. The petitioner No.1 also requested that measurement of a *Math* is also to be taken in presence of the Mahanth of the Math and other intellectuals of 10 villages on 30.11.2012, by which time the submerged land would have dried up and the standing crops would have been harvested. The measurement was done on 03.11.2012. It is the petitioners' case that petitioner No.3 was not present at the time of measurement. It appears that thereafter a notice was sent to the petitioners informing them about the measurement carried out on 05.11.2012, in the presence of petitioner Nos. 1 and 4. It was indicated in the said letter that they had been found to have encroached upon public land, *prima facie*. Accordingly, they were directed to appear before him and place their respective cases. The petitioners appeared before the Circle Officer and



submitted their defence to the effect that they and their ancestors were in possession over the said land for the last 40 years and in any case no obstruction was being caused to general public in movement over the road in question. The Circle Officer finally passed the order on 17.11.2012 (Annexure-11) holding specifically that the public road appertaining to Keshra No. 1116 was measured and it was found that 15 *Kari* (north south) and 50 *Kari* (East West), total 75 Sq.feet equivalent to 3.4 decimal was encroached upon by the petitioners by making pucca construction. Accordingly, he directed the petitioners to remove the encroachment. The petitioners preferred appeal before the District Magistrate, Saharsa. The District Magistrate, Saharsa recorded in his order that the petitioners failed to produce any document in support of their claim that they had right title over the land in question. The District Magistrate recorded in his order that the encroachment was apparently over a public land in the nature of public road, which was required to be removed. He, accordingly, refused to interfere with the order of the Circle Officer.

4. A counter affidavit has been filed on behalf of the State of Bihar justifying the impugned orders.

5. Mr. Rajesh Kumar Singh, learned counsel



appearing on behalf of the petitioners has submitted that the land in question is in their possession for the last 40 years and by virtue of the same, they have acquired right, title and interest by adverse possession. He has relied on a Special Bench decision of this Court in case of **Brij Bhukan Kalwar Vs. Sub-Divisional Officer, Siwan (AIR 1955 Patna 1)**.

6. In my opinion, the said decision of the Special Bench in case of Brij Bhukan Kalway (supra) has no application at all for the reason that in the said decision the constitutional validity of Bihar Land Encroachment Act, 1950 was under challenge which has since been repealed by the present Bihar Public Land Encroachment Act, 1956. It is significant to note that there is no averment in the writ application that the finding recorded by the Circle Officer and the Collector to the effect that the land in question is a public land is incorrect. There is no averment in the writ application that the land in question is not a public land. It is manifest thus, if these facts are taken together that as per the petitioners' own case that they have encroached upon a public land but they are claiming title over the land in question on the ground of having remained in possession for several years.

4. The impugned orders do not suffer from any legal



infirmity in view of the admitted fact that the land in question is a public land. The question as to whether the petitioners have acquired title by adverse possession cannot be gone into in the present proceeding under Article 226 of the Constitution of India.

5. This writ application, in my opinion, is without merit and is, accordingly, dismissed.

6. The interim order passed on 13.05.2013 stands vacated.

(Chakradhari Sharan Singh, J)

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