

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10351 of 2013

1. Ranjan Kumar Sinha, S/O Shri Ratneshwar Prasad Sinha Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
2. Kundan Kumar Shukla S/O Shri Roop Narayan Shukla Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
3. Subodh Kumar S/O Shri Hardeo Prasad Srivastava Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
4. Pradeep Kumar Gupta S/O Shri Jagarnath Prasad Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
5. Vinda Prasad Gupta S/O Shri Saryu Sah Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
6. Kashi Thakur S/O Shri Ramdhari Thakur Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
7. Ahmad Hussain S/O Md. Jahangir Allottee Shopkeepers Of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
8. Gajla Pravin W/O Late Abid Hussain Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
9. Anil Thakur S/O Late Sant Thakur Shri Bhushan Prasad Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
10. Madan Raut S/O Shri Ramdeo Raut Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
11. Shankar Kapoor S/O Shri Parmeshwar Kapoor Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
12. Aatish Anand S/O Shri Bhushan Prasad Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran
13. Mankeshwar Prasad S/O Shri Sitaram Prasad Allottee Shopkeepers of Motihari Nagar Parishad, P.O. Motihari, P.S. Town Motihari, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran, Motihari
3. The Special Officer, Motihari, Municipality, P.S. and P.O. - Motihari,



District - Motihari

4. The S.D.O. Sadar, Motihari, District - Motihari
5. The Circle Officer, Motihari Sadar, Motihari
6. Motihari Nagar Parishad, Represented through its Executive Officer Motihari Nagar Parishad, Motihari
7. The Executive Officer, Motihari Nagar Parishad
8. The Chairman, Motihari Nagar Parishad, Motihari
9. The Empowered Standing Committee of Motihari Nagar Parishad Motihari, Headed By The Chairman, Motihari Nagar Parishad Motihari.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10209 of 2013

1. Md. Rasul, S/O Late Sukhari Miyan, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
2. Sachin Kumar, S/O Sri Harish Tiwary, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
3. Kumar Amit Singh, S/O Sri Ram Janam Kumar, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
4. Arvind Kumar @ Kumar Arbind Singh, S/O Sri Ram Janam Kumar, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
5. Ravi Kumar, S/O Sri Ramayan Thakur, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
6. Nakcheed Baitha, S/O Sri Bhannu Baitha, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
7. Madiha Khatoon, W/O Md. Anwar, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
8. Mohan Prasad, S/O Sri Narayan Prasad, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
9. Ratnesh Kumar Asthana, S/O Late Rameshwar Prasad Asthana, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
10. Abdul Ajj, S/O Late Abdul Rashid ,Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
11. Prem Shankar Gupta, S/O Late Madan Lal Gupta, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran



12. Dinesh Prasad, S/O Sri Bhikhari Sah, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran
13. Md. Haroon, S/O Late Amin Miyan, Allottee Shopkeepers of Motihari Nagar Parishad, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran, Motihari
3. The Executive Officer, Motihari Nagar Parishad, Motihari
4. S.D.O. Sadar Motihari, East Champaran

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 19662 of 2013

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1. Arun Kumar, Son of Ram Janam Kumar, Resident of Mohalla - Mathia Zirat, P.S. - Chhatauni, District - East Champaran
2. Ram Janam Kumar, Son of Late Rajeshwar Kumar, Resident of Mohalla - Mathia Zirat, P.S. - Chhatauni, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran, Motihari
3. The Sub-Divisional Officer, Sadar, Motihari, East Champaran
4. Land Reforms Deputy Collector, Motihari, East Champaran
5. Anchaladhikari, Motihari, East Champaran
6. The Chairman, Motihari Municipality, Motihari, East Champaran

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 5087 of 2020

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1. Annapoorna, Devi W/o Bharatabhushan Prasad, Allottee Shopkeeper of Motihari Nagar Parishad, resident of Thakurbari, P.O.- Motihari,
2. Motilal Prasad, S/o Kamala Sah, Shopkeeper of Motihari Nagar Parishad, resident of Panch Mandir Road, Pakari Bazar, Motihari, P.O.- Motihari, P.S.- Town Motihari, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, East Champaran, Motihari.
3. The Special Officer, Motihari, Municipality, P.S. and P.O.- Motihari,



District- East Champaran, Motihari through Executive Officer, Motihari, Nagar parishad, Motihari

4. The S.D.O., Sadar, Motihari, District- East Champaran, Motihari.
5. The D.C.L.R., Sadar, Motihari, District- East Champaran.
6. The Circle Officer, Motihari Sadar, Motihari.
7. The Motihari Nagar Parishad, Represent through its Executive Officer, Motihari Nagar Parishad, Motihari.
8. The Executive Officer, Motihari Nagar Parishad, Motihari.
9. The Chairman, Motihari Nagar Parishad, Motihari.
10. The Empowered Standing Committee of Motihari Nagar Parishad, Motihari, Headed by the Chairman, Motihari Nagar Parishad, Motihari.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10351 of 2013)

For the Petitioner/s : Mr.Satyendra Rai, Advocate

For the Respondent/s : Mr.

(In Civil Writ Jurisdiction Case No. 10209 of 2013)

For the Petitioner/s : Mr. Binod Kumar Mishra, Advocate

For the Respondent/s : Mr. Santosh Kumar Mishra, AC to SC-26

Mr. Ratnakar Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 19662 of 2013)

For the Petitioner/s : Mr. Uma Shankar Verma, Advocate

Mr. Binod Kumar Mishra, Advocate

For the Respondent/s : Mr. Vinay Kriti Singh, GA-2

Mr. Sumant Kr. Singh, AC to GA-2

(In Civil Writ Jurisdiction Case No. 5087 of 2020)

For the Petitioner/s : Mr. Shekhar Singh, Advocate

Mr. Satyendra Rai, Advocate

For the Respondent/s : Mr. Rakesh Kumar Shrivastava, AC GP-15

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT**

Date : 11-02-2021

Heard learned counsel for the petitioners, State and other respondents.

2. Since all the writ applications involve common question of facts and law and with the consent of the parties, all the writ applications are being disposed of by this common oral judgment.



3. This batch of writ applications have chequered history. Earlier, the petitioners have approached this Court against the decision of the respondent Special Officer, Motihari Municipality. The order was interfered by the Writ Court in C.W.J.C. No. 7345 of 1999 on the ground that the order was passed without giving opportunity of hearing. After the order was passed in favour of the petitioners, the matter was examined by the Special Officer, Motihari Municipality and on consideration of the entire materials, the respondent Special Officer came to the conclusion that there is no need to cancel settlement in favour of the petitioners. However, another proceeding with regard to the encroachment over public land was drawn against the petitioners. The Circle Officer, Sadar in encroachment proceeding has come to a conclusion that the petitioners are encroachers. Against the order of the Circle Officer, the petitioners approached this Court in C.W.J.C. No. 5922 of 2010. The writ petition was disposed of with liberty to the petitioners to approach the appropriate authority. The Court granted indulgence to the petitioners to the extent that the delay in filing appeal shall be condoned. After the order of this Court in C.W.J.C. No. 5922 of 2010, the matter was examined by the Collector, East Champaran, Motihari in Encroachment Appeal



No. 56 of 2011-12. The Collector dismissed the Encroachment Appeal by detailed order.

4. Learned counsel for the petitioners submits that the petitioners are displaced persons and their shop/land have been settled by the competent authority and in fact they were running shop for their livelihood. Learned counsel further submits that the land, in question, is Gair Mazarua Malik and, as such, the respondent Motihari Municipality has every jurisdiction to settle the land to the displaced persons so that they may earn their livelihood.

5. In a proceeding under Article 226 of the Constitution of India, the Court is not in a position to enter into the controversy whether the land is a public land or not. The competent authority under the Public Land Encroachment Act have already determined the issue and held out that the petitioners are encroachers over the public land and the order passed by the Circle Officer, who is the competent authority under the Act was approved by the Collector, Motihari in Encroachment Appeal, bearing Encroachment Appeal No. 56 of 2011-12.

6. The only issue before this Court which require to be decided is the right of livelihood of the petitioners, as they claimed that they are displaced persons and as a Welfare State, it is the



responsibility of the State to provide opportunity to earn bread and butter.

7. The Apex Court has occasion to examine the right of Street Hawkers in **Saudan Singh and Ors. vs N.D.M.C. and Ors.**, reported in **AIR 1992 SC 1153**, where the Apex Court had noted the right of squatting as integral part of Article 21 of the Constitution of India. Though this Court is not inclined to interfere with the order passed by the Collector in the Encroachment Appeal, but at the same time, the Court is of the considered view that the Welfare State has to adopt welfare measures so that the petitioners, who claims to be the displaced persons and they were allotted land for running shops with a view to earn bread and butter from such shops be extended some protection. The respondent District Magistrate, Motihari is required to explore possibility of alternative arrangement so that the petitioners and their family members may not be rendered jobless and suffer penury on account of decision to remove encroachment without providing alternative arrangement for their livelihood.

8. The Court hope and trust that the District Magistrate, Motihari shall explore the possibility of allotment of suitable place to the petitioners so that the petitioners and their family may not be affected adversely. Necessary decision in this regard may be taken



by the respondent District Magistrate within a period of six months from the date of receipt/production of a copy of this order.

9. With the aforesaid, all the writ applications stand disposed of.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2021
Transmission Date	NA

