

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7426 of 2020

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Dinesh Yadav, Son of Late Tikam Yadav, Resident of Village-Mamarkhabad,
P.S.-Pandarak, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms and Revenue Department, Bihar, Patna.
2. Collector-cum-District Magistrate, Patna.
3. Deputy Collector Land Reforms, Barh, District Patna.
4. Circle Officer, Pandarak, Barh, District-Patna.
5. Kalicharan Yadav, Son of Makhan Yadav, Resident of Village-Mamarkhabad, Police Station-Pandarak, District-Patna.
6. Rameshwar Yadav, Son of Prayag Yadav, Resident of Village-Mamarkhabad, Police Station-Pandarak, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Ms. Mahasweta Chatterjee, Advocate
For the State	:	Mr. Md. Khurshid Alam, AAG-12
For Respondent No. 6	:	Mr. Manish Kumar No. 2, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

13 13-04-2021 Heard Ms. Mahasweta Chatterjee, learned counsel for the petitioner, Mr. Md. Khurshid Alam, learned Additional Advocate General No. 12 and Mr. Manish Kumar No. 2, learned counsel for Respondent No. 6.

2. The petitioner has put to challenge an order dated 04.10.2005, passed by the Deputy Collector Land Reforms, Barh, Patna in Encroachment Case No. 01 of 2005-06, whereby the petitioner has been directed to remove encroachment from a piece of land over which brick soling had been done by the



Rural Engineering Organisation under *Jawahar Rojgar Yojna*.

3. The petitioner had preferred an appeal against the said order giving rise to Encroachment Appeal Case No. 05 of 2006-07, which was dismissed by an order dated 11.03.2017, passed by the Collector-cum-District Magistrate, Patna, which is also under challenge in the present writ application.

4. The dispute relates to a piece of land bearing Plot No. 334, appertaining to Khata No. 170. It is the petitioner's case that the said plot is a *raiyyati* land which was recorded in the names of vendor from whom the petitioner's father had purchased through a registered deed of sale dated 02.05.1997 and constructed a residential house where he had been residing with his family till his death and after his death the petitioner and other members of the family are residing. Name of the petitioner's father was mutated in respect of the said land and he had been paying the land revenue accordingly.

5. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioner has argued, with reference to the pleadings in the writ petition, that on the false allegation that the petitioner had encroached upon the land in question, Respondent No. 6 had filed a petition before the Sub-Divisional Officer, Barh. Under the orders of the Sub-Divisional Officer,



Barh, a Pleader Commissioner was appointed who had reported that he did not notice any road constructed over the plot in question. By an order dated 15.06.2005, passed in a proceeding under Section 144 of the Code of Criminal Procedure, the Sub-Divisional Officer recorded that Respondent No. 6, in order to harass the petitioner, had filed a case and accordingly dropped the proceedings initiated under Section 144 of the Cr.P.C. Another petition was filed seeking removal of encroachment alleging that the petitioner had encroached upon the same land leading to registration of Encroachment Case No. 01 of 2005-06 in the office of the Deputy Collector Land Reforms (Respondent No. 3). Responding to a notice issued by the Deputy Collector Land Reforms, the petitioner appeared and clearly stated that the land in question was his *raiya* land and that he had not encroached upon any public land.

6. Ms. Chatterjee has argued that without recording any finding to the effect that the land in question is a public land, the Deputy Collector Land Reforms has passed the impugned order directing the petitioner to remove the encroachment in a proceeding under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'). The appeal preferred by the petitioner remained pending for



years together and after several adjournments the Appellate Authority passed the order on 11.03.2017 dismissing the appeal. She has submitted that no hearing of the appeal had ever taken place before the Collector-cum-District Magistrate, Patna and he dismissed the appeal without meeting the grounds taken in the memo of appeal and recording as to why such grounds were not tenable. She has argued that petitioner learnt about the appellate order only after notices were being issued to the petitioner for removal of the so called encroachment on a public land, thus, compelling him to approach this Court by filing the present writ application.

7. Mr. Md. Khurshid Alam, AAG-12 appearing on behalf of the State of Bihar, on the other hand, has submitted that there is no illegality in the impugned order as it was found on the basis of spot verification that the construction had been made after removing the brick soling which was done by Rural Engineering Organisation under *Jawahar Rojgar Yojna*. He has submitted that since the petitioner was found to have encroached upon a piece of land which was in use by public as public land, the impugned orders do not require interference.

8. Mr. Manish Kumar No. 2, learned counsel appearing on behalf of Respondent No. 6 has submitted that the



petitioner is a habitual encroacher and his father was also a habitual encroacher over the public land. He has submitted that the land over which the petitioner has raised *pucca* construction does not belong to him and the same is a public land. He has further submitted that the land in question was, as a matter of fact, donated by the land owners in favour of the State of Bihar for construction of public road and the documents of transfer of land to the Government are there on record in the present proceeding.

9. I have carefully perused the impugned original order passed by the Deputy Collector Land Reforms. There is absolutely no finding in the impugned order that the land in question is a public land. The petitioner had taken his specific plea that the land in question is not a public land and, as a matter of fact, is a *raiya* land. This defence has not at all been considered by the Deputy Collector Land Reforms in his impugned order. Similarly, there is no such consideration by the Collector-cum District Magistrate, Patna in his appellate order in this regard. In the appellate order also, there is no finding that the land in question is a public land. Only on the basis that brick soling was done by Rural Engineering Organisation under *Jawahar Rojgar Yojna* over the said piece of land, the



authorities have passed the impugned order for removal of encroachment.

10. Public land has been defined under the Act (Bihar Act 15 of 1956) in sub-section (3) of Section 2 as under :-

(3) “public land” means any land [managed by or] vested in the Union of India or the State of Bihar, or in any local authority [or statutory body], [public undertaking,] educational institution recognised by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.”

11. Since there was specific plea taken by the petitioner that the land in question was not a public land, it was obligatory for the respondents to have considered the said aspect and recorded specific finding in this regard. In the absence of such finding, no order could have been passed by the authorities under the Act for removal of encroachment from the land in question.

12. Submission made on behalf of Respondent No. 6 is thoroughly misconceived. There is no document on record nor



there is such pleading to the effect that the land in question was validly donated to the State Government by the land owners. Apparently, vague and irresponsible submission has been made at the Bar in this context on behalf of Respondent No. 6.

13. In such view of the matter, the impugned order dated 04.10.2005, passed by the Deputy Collector Land Reforms, Barh, Patna and appellant order dated 11.03.2017, passed by the Collector-cum-District Magistrate, Patna require interference and are accordingly set aside. This writ application is allowed.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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