

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13585 of 2021

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Shaila Devi @ Mst. Shaila Devi @ Smt. Shaila Devi @ Musmat Shaila Devi,
W/o Late Gurudarshan Das, R/o Village-Ward No. 4 (New Ward No. 14),
Bhabhua, P.S.-Bhabhua, District-Kaimur at Bhabhua.

... .. Petitioner

Versus

1. Bhabua Municipality through its executive officer, Bhabua Municipality (Nagar Parishad) P.S. Bhabua, District-Kaimur at Bhabua.
2. The Executive Officer, Bhabua Municipality (Nagar Parishad) Bhabua, District-Kaimur at Bhabua.
3. Chunmun Das, S/o Late Guru Charan Das, R/o Village Ward No. 4 (New Ward No. 14, Bhabua, P.S.-Bhabua, District Kaimur at Bhabua.
4. The Circle Officer, Bhabua Circle, P.S.-Bhabua, District Kaimur at Bhabua.
5. State of Bihar through the Principal Secretary, Urban Department, Government of Bihar.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Rajesh Kumar, Advocate

For the Respondent State: Mr. Abbas Haider, SC-6

For the Respondent Bhabhua Municipality: Mr. Vinod Kumar Seth, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 29-10-2021 This matter has been taken up *on-line* because of COVID-19 restrictions.

The petitioner is seeking quashing of letter No. 12 dated 11.01.2021 issued by the Executive Officer, Bhabhua Municipality (Nagar Parishad), Bhabhua (respondent No.2), whereby he has requested the Circle Officer, Bhabhua, to initiate a proceeding for removal of encroachment from a public land, which is occupied by the petitioner.

During the pendency of this writ application, respondent No.2 has issued a notice to the petitioner asking her



to remove the encroachment allegedly caused by her. The said communication is also sought to be challenged by seeking amendment in the writ petition.

From the facts averred in the writ application, it transpires that the petitioner's late husband had filed a Title Suit No. 107/1996/45/1998 in the Court of learned Sub-Judge, Kaimur at Bhabhua, seeking a declaration that the municipal survey *khatiyān* and map with respect to plots in question were wrongly prepared. He had also sought for a declaration that any action taken pursuant to an order passed in Permission Case No. 12 of 1994-95 was illegal.

The title suit was decreed in favour of the petitioner's husband. An appeal was filed by the Municipality against the judgment and decree passed in the said Title Suit No. 107/1996/45/1998. The judgment and decree passed by the trial court was set aside by the first appellate court by judgment and order dated 18.06.2010 passed by the learned Additional District Judge-V, Kaimur at Bhabhua.

Thereafter, a second appeal was filed by the petitioner before this Court giving rise to S.A. No. 551 of 2011 against the judgment and decree passed in T.A. No. 47/1999/77/2009. The second appeal was apparently time barred. The petitioner was



allowed time by this Court to file limitation petition and remove other defects in the second appeal. The second appeal has been dismissed for default for non-compliance of peremptory order passed on 26.07.2012. Nearly seven years thereafter, the petitioner is said to have filed a restoration application for restoration of the second appeal, which has given rise to M.J.C. No. 3389 of 2019.

Learned counsel for the petitioner has made two submissions. He has firstly submitted that respondent No.2 ought not to have taken any action for removal of encroachment during the pendency of the restoration application for restoration of S.A. No. 551 of 2011. He has further submitted that once respondent No.2 has requested the Circle Officer to proceed under the provisions of Bihar Public Land Encroachment Act, 1956, he ought not to have subsequently issued a show cause notice asking the petitioner to remove the encroachment and threatening him that if the encroachments are not removed, the same shall be removed by the Municipality.

It is evident from the facts noted above that the petitioner is claiming title over the land in question in respect of which title suit was filed. The decree passed in favour of the petitioner was subsequently reversed by the first appellate court.



There is no second appeal pending before this Court in the eye of law for two reasons. Firstly, a second appeal filed beyond the period of limitation cannot be said to be a competent appeal. Secondly, the appeal has been admittedly dismissed for default. The plea that the Municipality should have awaited till restoration application was decided by this Court for restoration of second appeal is wholly misconceived and is accordingly rejected.

So far the action of the Municipality to remove the encroachment is concerned, considering the conduct of the petitioner, I am not inclined to entertain the writ application. It goes without saying that the respondents shall be at liberty to remove the encroachment in accordance with law.

This application is dismissed with the aforesaid observations.

(Chakradhari Sharan Singh, J)

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