

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12161 of 2019

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Birendra Prasad Singh, Son of Late Yogendra Pd. Singh, Resident of Mohalla-
Bangali Tola, Ward No. 25, At, P.O. and P.S.- Samastipur, District-
Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Deptt. of Revenue.
2. Deputy Development Commissioner-cum- Chief Executive Officer Zila Parishad, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Narayan Singh, Sr. Advocate Mr. Subodh Kumar, Advocate
For the State	:	Mr. Rishi Raj Sinha (SC19) Mr. Saurabh Kumar, AC to SC-19
For the Zila Parishad	:	Mr. Sanjeev Kumar Singh, Advocate Mr. Pramod Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 18-02-2021

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel appearing for the Zila
Parishad, Samastipur.

In the present case, the petitioner is challenging the
Notice bearing Memo No. 432 dated 26.02.2019 issued by D.D.C.-
cum-Chief Executive Officer, Zila Parishad, Samastipur by which
the petitioner has been directed to vacate the encroached land, but
from the records, it appears that this letter was not acted upon by
the D.D.C., but the D.D.C. has addressed a letter dated 15.06.2019
to the Circle Officer, Jitwarpur, Samastipur wherein a request was
made that the encroachment of land of Zila Parishad should be
removed, whereupon, encroachment proceeding was initiated in



which notice was given to the petitioner, but the petitioner has not participated in the proceeding and finally, the order dated 11.02.2020 for removal of encroachment has been passed.

In the present case, the petitioner is not challenging the order of initiation of encroachment proceeding passed by the Circle Officer, but he is challenging the notice issued by the DDC-cum-Chief Executive Officer, Zila Parishad, Samastipur which was never acted upon, but on his request a separate proceeding was initiated.

Counsel for the petitioner has placed reliance on the order of permanent injunction passed in T.S. No. 85 of 1976 by the Munsif 2nd, Smastipur wherein the subject matter of consideration was Khesra No. 231 measuring 1 katha 13 dhurs appertaining to Khata No. 55, which was Gairmazaura land of Tauzi No. 929 C and one Ram Dayal Sah was one of the co-sharer in the said Tauzi.

From the records, it appears that the impugned action, which should have been challenged in the present proceeding, has not been challenged in the writ application, rather a notice issued by the D.D.C.-cum-Chief Executive Officer, Zila Parishad, Samastipur has been challenged, which was never acted upon and that too it also appears that the petitioner after receiving the notice failed to participate in the encroachment proceeding initiated by



the Circle Officer and finally, it appears from the order dated 11.02.2020 that all the encroachments have been removed.

Counsel for the petitioner has placed reliance on the judgment reported in 2011 PLJR (4) 504, which is quite different from the facts of the present case and does not apply in the present case and he can only claim his right over the property, which has been declared by the civil court in T.S. No. 85 of 1976.

During conversation with the counsel for the respondents, he has submitted that they have not removed the petitioner from the land, which has been declared to exclusive right by an ex-parte order dated 11.02.2020, as the same was not challenged in any court of law, it has remained in force till today. However, the petitioner, if so aggrieved, may challenge the order of Circle Officer before the appellate forum or he may file a suit for declaring of title and recovery of possession as per the law.

With the aforesaid observations and directions, this writ application is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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