

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14938 of 2018**

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1. Bhubneshwar Mandal, Son of Sirekhan Mandal, resident of Village and Post- Bore, P.S.- Baheri, District- Darbhanga.
  2. Ganga Prasad Mandal, S/o Panchu Mandal, resident of Village and Post-Bore, P.S.- Baheri, District- Darbhanga.
  3. Lalit Kumar Singh, Son of Sri Krishna Mandal, resident of Village and Post-Bore, P.S.- Baheri, District- Darbhanga.
  4. Jairam Mandal, Son of Late Kripal Mandal, resident of Village and Post-Bore, P.S.- Baheri, District- Darbhanga.
  5. Mamta Kumari, Wife of Sri Jhoti Mandal, resident of Village and Post-Bore, P.S.- Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development Department Bihar Patna
2. Secretary, Human Resources Development Department, Bihar, Patna.
3. Director, Primary Education, Bihar, Patna.
4. District Magistrate, Samastipur.
5. Sub-Divisional Magistrate, Rosera under District Samastipur.
6. District Education Officer, Samastipur.
7. District Programme Officer Primary Education RSMA Samastipur.
8. Circle Officer Shivajee Nagar under District Samastipur.
9. Block Education Officer Shivajee Nagar District Samastipur.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Diwakar Prasad Singh, Advocate<br>Mr. Raj Nandan Prasad, Amicus Curiae<br>Mr. Abdul Wadood, Advocate<br>Mr. Braj Kishore Singh, Advocate<br>Mr. Bijay Kumar Pandey, Advocate |
| For the Respondent/s | : | Mr. Shashi Shekhar Tiwari, Advocate<br>Mr. Rajendra Kumar Jain, Advocate<br>Mr. Avinash, Advocate<br>Mr. Arvind Kumar Pradhan, Advocate<br>Mr. Kritya Nand Jha, Advocate         |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**



**Date : 30-06-2022**

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

- (i) That for issuance of appropriate writ/order/direction be issued commanding the respondents to direct the District Magistrate Samastipur to remove the **encroachment from Anabad Sarvsadharan land bearing Plot No.204, under Khata No. 103 (New) area 26 Decimal & for the construction of newly Created Primary School Bore under Block Shivajee Nagar District Samastipur, since the Circle Officer Shivajee Nagar issued process under Section 06 of Bihar Public Land Encroachment Act 1956 by his Notice dated 02.11.13 [Annexure-10 Series] but the Encroachment was not removed till today .**
- (ii) That for Issuance of appropriate writ/order/direction be issued commanding the respondents District Magistrate to sanction the funds for the School building & Boundary wall in view of compliance of Memo No. 344 dated 03.04.16 [Annexure-20] issued under the signature of District Programme Officer Primary Education (RSMA) Samastipur & the teaching works to the School may kindly be directed to be commenced without any delay in the village Bore itself.
- (iii) That for Issuance of appropriate writ/order/direction be issued commanding the respondents not to **shift or tag the Primary School Bore with any nearest Primary School as in the case of petitioner's village the Primary School Bore was tagged with Primary School Gari Basantput both situated under Block Shivajeenagar under District Samastipur situated 1.5 Kilo meter away from the petitioner's village whereas the children studying/registered in the village School at Primary School Bore are just below 10 years of age & there is no adequate & proper transporting system as such the Shifting to the School shall amount to closure of the School as such direct the respondent to make any alternative arrangement feasible in the village or the same may be shifted in the Anganwari Kendra to the village situated besides the proposed land.**



- (iv) That for issuance of appropriate writ/order/direction be issued commanding the respondents to provide protection from the encroachers who has encroached upon the public land since they are threatening dire consequence to the person submitting representation to the public authority?
- (v) That for grant of any other relief or reliefs to which the petitioner be found entitled in law be granted to them.

On 20<sup>th</sup> of January, 2021, we had passed the following order:-

“The affidavit filed by the Principal Secretary, Education Department, Government of Bihar reflects that pursuant to the order dated 7.12.2020, the Chief Secretary, Government of Bihar convened meeting and thereafter the district administration got into action and unauthorized encroachments over the public land in question identified for construction of building of Primary School, Bore, stands removed. The total stretch of the land in question is approximately 26 decimals.

The affidavit further reflects that a sum of Rupees Sixteen Lacs stands sanctioned for fencing etc. vide letter dated 31.12.2020, as contained in Annexure A series to the counter affidavit. We expect that the process of fencing etc. shall be undertaken expeditiously.

We notice that the affidavit is conspicuously silent (a) with regard to the place where the school is functioning presently; (b) as to whether children are admitted in the school; and (c) as to whether the posting of teachers in prescribed number is maintained or not.

Importantly, Secretary, Education Department, Government of Bihar has highlighted the need and importance of implementing the provisions of Right to Free and



Compulsory Education Act, 2009. As such, we need not issue any direction to them, save and except, the authorities to take immediate measures for meeting out the deficiencies.

From the affidavit filed by the respondent no. 1 it is apparent that a large number of persons, perhaps, including the applicants/interveners who seek intervention herein, had unauthorizedly occupied the land in question. Such encroachments now stand removed.

Learned counsel for the applicants/interveners state that as per Cadestral Survey and Revisional Survey records, the land in question is recorded as road/path and, as such, no construction can be raised thereupon.

We are sure that all formalities will be completed by the authorities concerned in correcting the revenue records. If the site identified for the construction of school building is found most suitable and convenient, there should be no difficulty in re-alignment of the road.

Learned counsel for the applicants/interveners state that they shall file affidavit indicating that they will not occupy/encroach any public land. Also, they shall offer/donate the land if the authorities change the situs of the school.

It is always open for the authorities to change the site but then, such action would not preclude the authorities in fencing the land, already notified, and sanctioning budget for construction of school building.

List on 28.1.2021.”

We find that with the passage of time, more so allocation of funds for construction of the school building and the boundary wall, the present petition has outlived its purpose.



As such, we close the present proceedings reserving liberty to the petitioner or any other public spirited person to highlight the grievances, if any, before the competent authority, should the need so arise subsequently.

We are hopeful that as and when any such grievances are brought to the notice of the competent authority, and more so District Magistrate, Samastipur, the same shall be addressed with promptitude.

It is made clear that we have not expressed any opinion on merits. All issues are left open.

The present petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

**(Sanjay Karol, CJ)**

Amrendra/PKP

**(S. Kumar, J)**

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| AFR/NAFR          |            |
| CAV DATE          |            |
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