

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13166 of 2018

1. Indu Devi Wife of Manoj, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
2. Santosh Gulguliya, Son of Pirpiya Gulguliya, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
3. Chanmuni Devi, Wife of Late Dukhan Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
4. Ravi Nat, Son of Late Dukhan Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
5. Suraj Nat, Son of Bitan Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
6. Puja Devi, Wife of Suraj Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
7. Gorakh Nat, Son of Late Nagina Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
8. Sanjay Nat, Son of Late Banshi Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
9. Jira Devi, Wife of Dipu Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
10. Sita Devi, Wife of Ravi Kumar, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
11. Champa Devi, Wife of Ramkrishna Nat, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
12. Ruby Devi, Wife of Tulsi Ram, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
13. Tulsi Ram, Son of Late Munna Ram, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
14. Manoj Ram, Son of Musafir, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
15. Kajal, Daughter of Chunnu Paswan, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
16. Gautam Kumar, Son of Chandrashekhar Paswan, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.
17. Bhola Paswan, Son of Ashok Paswan, Resident of Jagjivan Nagar, under Chitkohra Flyover, Chitkohra, Patna- 800001.

... .. Petitioners

Versus

1. The Union Of India through the Secretary, Ministry of Housing and Urban Poverty Alleviation, New Delhi.
2. The Union of India through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.



3. The State of Bihar through the Principal Secretary, Ministry of Urban Development and Housing Department.
4. The Patna Municipal Corporation through its Municipal Commissioner, Patna.
5. The Managing Director Bihar Urban Infrastructure Development Corporation Ltd.
6. The Senior Superintendent of Police, Patna, Bihar.
7. The Officer in charge Gardanibagh Police Station, Patna, Bihar.
8. The General Manager, East Central Railway, Hajipur.
9. The Divisional Railway Manager, Danapur, East Central Railway.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Abhinav Ashok, Adv.
For the Respondent-State;	:	Mr. Rajeev Kumar Sinha, AC to AAG-7
For the PMC	:	Mr. Prasoon Sinha, Adv.
For the UoI	:	Mr. Sujeet Kumar Sinha, CGC
For the Railway	:	Mr. Rakesh Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 14-07-2022

In the present application, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents not to demolish the slum named Jagjiwan Nagar under Chitkohra Bridge, P.S. Gardanibagh, Patna without relocating/rehabilitating the residents of the slum.

2. The contention of the petitioners is that they are poor slum dwellers and are residing at the slum, namely, Jagjiwan Nagar under Chitkohra Bridge, P.S. Gardanibagh of Patna district for the last more than two decades. Earlier, the



petitioners and the slum dwellers were living in Kumharar. However, in 1995, an assurance was given to the slum dwellers that 32 pucca houses would be constructed and they shifted to the present site. The slum dwellers have been issued Voter ID Cards, Aadhar Cards etc. Subsequently, with the growth of population, number of *jhopris* increased and there are at least one hundred *jhopri* situated at the site. On 04.07.2018, a public announcement was made informing the slum dwellers to vacate the site or else their *jhopri* would be demolished.

3. The further contention of the petitioners is that the petitioners have right to shelter and unless an alternative arrangement made by the government, they cannot be evicted forcefully.

4. Mr. Prasson Sinha, learned counsel appearing for the Patna Municipal Corporation submitted that recently in a similar case [**Saraswati Devi and Another vs. The State of Bihar & Others (C.W.J.C. No. 12060 of 2021)**] this Court after elaborately dealing with the facts and the relevant laws dismissed the writ petition in view of the observations made by the Hon'ble Supreme Court in *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors.*, since reported in *AIR 1997 SC 152*.



5. The relevant para-10 of the judgment in **Saraswati Devi** (supra) reads as under:

“10. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of



principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.”

(emphasis supplied)

6. There is no dispute that the slum in question is



situated under Chitkohra bridge, which is public land. It has repeatedly been held by the Constitutional Courts that competent authorities should ensure constant vigil on encroachment of the public places and remove encroachments at the earliest from public lands. The Court cannot encourage encroachment on public land in the name of public interest litigation as would be counter productive and against the interest of public at large.

7. In view of the observations made by the Hon’ble Supreme Court in *Ahmedabad Municipal Corporation (supra)*, We are of the opinion that encroachment over a public land cannot be allowed to continue by citing the pretext of right to shelter.

8. Accordingly, the writ petition being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J)

(Dr. Anshuman, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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