

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14435 of 2022

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Bhagchandra Jha Son of Late Radha Kant Jha, Resident of Village Betauna,
Ward No. 6, P.S. Benipatti, District Madhubani. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Madhubani.
4. The Sub-Divisional Officer, Benipatti, District- Madhubani.
5. The Circle Officer, Benipatti, District- Madhubani.
6. Bauji Jha Son of Late Sukhdeo Jha, Resident of Village Betauna, P.S. Benipatti, District Madhubani.
7. Kashi Kant Jha Son of Late Dhani Yadav, Resident of Village Betauna, P.S. Benipatti, District Madhubani.
8. Keshwar Yadav Son of Late Dhani Yadav, Resident of Village Betauna, P.S. Benipatti, District Madhubani.
9. Matwar Yadav Son of Late Dhani Yadav, Resident of Village Betauna, P.S. Benipatti, District Madhubani.
10. Banker Yadav Son of Late Dhani Yadav, Resident of Village Betauna, P.S. Benipatti, District Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arjun Kumar, Advocate
For the Respondent/s : Mr.Md. Khurshid Alam (AAG- 12)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Date : 14-10-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“i. For the direction/directions to the

Respondents to remove the encroachment/illegal possession over the land measuring area 01 Acre 50 Decimals under Betauna Mauza, Circle Benipatti, District Madhubani bearing Old Khata No. 160, Old Khesra No. 1103, of which New Khata No. 776, New Khesra No. 3491 recorded in Khatian as “Shamsan” (the place of cremation) and the same has been under the illegal possession of the Private Respondents No. 6 to 10;

(ii) For the direction/s to the Respondents that the above mentioned land fixed for place of cremation from the time of Cadastral Survey to the Revisional Survey to be used for any public purposes decided by the Government of Bihar;

(iii) For the declaration/s that the above mentioned land is in illegal possession of the private Respondent No. 6 to 10 and they are not entitled to use them as per their wish;

(iv) For the declaration that the land which is fixed for cremation of the dead body even at the time of Cadastral Survey cannot be given to any person by way of any proceeding either by way of issuing Parcha or by way of other means;

(v) For any other relief or reliefs as it may be deem fit in the facts and circumstances of the present case.”

Learned counsel for the State opposes the petition stating that the petition is misconceived; raises disputed question of fact; is not in public interest; and that the issue can be best resolved at the local level by the appropriate authorities.

We find that petitioner has an alternative remedy, equally efficacious in term of and under the provisions of the Bihar Public Land Encroachment Act, 1956.

We also find that Encroachment Case No. 05/2020-21 is already pending before Respondent No. 5, namely, the Circle Officer, Benipatti, District- Madhubani.

As such, petition stands disposed of in the following terms:-

(a) Respondent No. 5, namely, Circle Officer, Benipatti, District- Madhubani shall consider and dispose of Encroachment Case No. 05/2020-21 within a period of six months from the date of receipt/production of a copy of this order;

(b) The said authority shall consider and dispose of the matter by passing a reasoned and speaking order;

(c) Needless to add, while considering and deciding the matter, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(d) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(e) We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA