

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1218 of 2023

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Sudhir Choudhary Son of Late Basuki Choudhary @ Basudeo Narayan Choudhary Resident of Village- Dhouni, P.S.- Tarapur, Distt.- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land and Revenue Department, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Collector, Munger, Distt.- Munger.
3. The Additional Collector, Land and Revenue, Munger, Dist.- Munger.
4. The Circle Officer (Anchaladhikari) of Tarapur Circle, District- Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate
For the Respondent/s : Mr. Asif Kalim (AC to AAG-12)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 25-01-2023 Heard Mr. Sanjay Kumar Jha, learned counsel appearing on behalf of the petitioner and Mr. Md. Khurshid Alam, learned (AAG-12) appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is aggrieved by a notice issued pursuant to sub-Section 2 of Section 6 of Bihar Public Land Encroachment Act, 1956 (hereinafter referred as “the Act”) in connection with Encroachment Case No. 01/2016-17 by the Circle Officer, Tarapur, District- Munger. The grievance of the petitioner is that the house situated on a land appertaining to Khata No. 79 Khesra No. 211, which was mutated in the name of his father vide mutation case No. 756/1974-75 and on



the said basis petitioner has been in possession on the said land till date. He further submitted that the revenue record, which is maintained at the circle level, reveals that the Circle Officer is aware of the said fact but without initiating any proceeding for cancellation of the Jamabandi No. 213/116 created in the name of the petitioner, by filing an appeal before the DCLR, Munger has resorted to initiate an encroachment proceeding allegedly, on the ground that the said land has been donated by one of the co-sharers who are the ancestor of the petitioner. The specific submission is that any co-sharer has right to donate, sale or gift any land which falls in his share. So far as the land, which has come in the share of the petitioner, was never gifted. Thus, the Circle Officer committed a mistake of record by not going through the recitals of the gift deed nor he has referred the same in his order and given his finding to that effect. On these grounds, the petitioner submits that the order passed in Encroachment Case No. 01/2016-17 is fit to be quashed.

3. Learned counsel appearing on behalf of the State submitted that since the disputed question of facts are involved in the present writ petition, the same is not maintainable. He further submitted that though the petitioner has been able to demonstrate that Jamabandi No. 213/116 has been created in the



name of his father but in connection with the land in question appertaining to Khata No. 79, Khesra No. 211, the Jamabandi has also been created in name of the Governor.

4. Considering the rival submission of the parties, the fact which has emerged before this Court is that the Collector, Munger instead of having filed an appeal against the order of mutation for cancellation of Jamabandi created in favour of the petitioner on the basis of any gift deed executed by the ancestor of the petitioner in favour of the Governor, has resorted to direct the Circle Officer to initiate encroachment proceeding against the petitioner. This Court is aware of the fact that in exercise of power under Article 226 of the Constitution of India it cannot intrude into the general affairs and function of the District Administration, but so far as the present case is concerned, the fundamental right of the petitioner is involved. The petitioner has been able to show before this Court that Jamabandi No. 213/116 still exists in the name of the father of the petitioner. The petitioner has been served the certified copy of the order passed under Section 6(1) before notice under sub-Section 2 of the Section 6. The said order if at all on record with the Circle Office is required to be recalled by him in the interest of justice.



5. This Court would have quashed the order, if the either party would have brought on record. The Circle Officer, Tarapur is directed to serve a copy of order passed under Section 1 of Section 6 if any to the petitioner forthwith. The petitioner, if so advised, may file an appeal against the order passed under Section 6(1) of the Act in connection with Encroachment Case No. 01/2016-17, before the notice issued under sub-Section 2 of Section 6 of the Act before the Collector, Munger

6. The Circle Officer, Tarapur, must not play with the record.

7. Till the appeal is not decided, no coercive action shall be taken and petitioner shall not be disturbed in any manner.

7. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

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