

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6128 of 2020

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Arvind Kumar Son of Pramanand Singh Resident of Bakerganj, Nala par,
Udyog Bhavan, P.S. Pirbahore, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna.
2. The Bihar Industrial Area Development Authority through its Managing Director, Patna.
3. The Managing Director Bihar Industrial Area Development Authority, Patna.
4. The District Magistrate Patna.
5. Patna Municipal Corporation through its Town Commissioner, Patna.
6. The Town Commissioner, Patna Municipal Corporation, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Ranjan, Advocate
For the State	:	Mr. Khurshid Alam , AAG-12
		Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 21-04-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The writ application has been filed regarding some
alleged boundary being constructed around a government
building, so as to cause encroachment. It is stated that the same



is also likely to obstruct some proposed renovation by the Municipal Corporation.

3. The Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “the Act”) provides remedy for removal of encroachment from public lands. Section 4 of the Act allows an opportunity to the noticee (petitioner) to raise any defense which they could have raised if they were defendants in a properly framed suit for removal of encroachment. The Act also provides an opportunity of hearing under Section 5; as well as the consequences of nonappearance in the proceedings.

4. It is only after observing the above procedure that final order is to be passed by the Collector under Section 6 of the Act, either dropping the proceedings or passing orders for ensuring removal of encroachment, damages or otherwise. The order of the Collector for removing encroachment is also subject to appeal under Section 11 of the Act. Section 13 of the Act also provides an opportunity of review in case of any mistake or error in the course of any proceedings.

5. The issue raised by the petitioner is essentially an issue falling within the scope and ambit of the Act. The writ petition, by way of a PIL, therefore, in the opinion of the Court, is misconceived. If the instant case were to be entertained as a



PIL, then all issues of encroachment would be required to be dealt with by this Court as a PIL.

6. Learned counsel for the petitioner has also relied upon a decision rendered earlier in C.W.J.C. No. 15783 of 2009 (Amit Kumar Prasad Vs. the State of Bihar & Ors.) to submit that this Court has already restrained the respondent Authority from making any construction/encroachment on the area, which is the subject matter of the instant writ proceedings.

7. If the petitioner's grievance with respect to the same land is covered by an earlier Division Bench order, then this Court would observe that there is no occasion to successively invoke the writ jurisdiction for issuing orders in respect of the same issue, when an earlier order exists. For enforcement of such order, the remedy does not lie by filing a successive writ petition.

8. If the petitioner's grievance includes encroachment on any other plot, then the remedy would lie by way of proceedings under the Act. The petitioner has placed on record a communication issued by the alleged encroacher (Respondent No.2) claiming title of the lands alleged to be encroached. Therefore, in the opinion of this Court, resort to Public Interest Litigation is thoroughly misconceived.



9. For availing remedy in accordance with law, the writ
petition is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.04.2023.
Transmission Date	

