

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5559 of 2023

1. Vijay Singh Son of Late Jhagru Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.
2. Ramji Singh Son of Anand Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.
3. Surendra Singh Son of Late Jhagru Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.
4. Ambika Singh @ Ambika Prasad Singh Son of Late Harinarayan Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.
5. Akhilesh Kumar @ Nagina Singh Late Narendra Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.
6. Ekram Singh Son of Mahendra Singh Resident of Narsingh Bigha PO Pahleja, P.S. Dihri (Muffasil) District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Revenue, Bihar,
2. The District Magistrate, Rohtas.
3. Circle Officer, Dihri, District-Rohtas.
4. Official Liquidator Dalmianagar Cement Bharat Limited Dalmia Nagar District Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Diwakar Prasad Singh, Adv.
For the Respondent/s : Mr.Rishi Raj Sinha, SC-19

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 18-07-2023 The present writ petition has been filed seeking the following reliefs:-

“1.That Petitioners are resident of District Rohtas having concrete House (Pucca Makan) since more than 50 years under Mouza Suwara Thana No.164 Old Plot No.125 (part) under Khata No.258 recorded as Malik Gairmazarua in Cadastral Survey Khatiyani & the Petitioner's ancestor were paying Malguzari rent to Ex-



intermediary Jamindar & the Jamindar submitted return at the time of Vesting & subsequently name of petitioner's ancestor Kauleshwar Son of Tapshi & others were recorded in Register-II i.e. Tenant Ledger (Annexure-4) series & as such the petitioner is paying Malguzari Rent to state.

In Revisional Survey operation some major mistakes were committed contrary to interest of small tenant like the petitioners. In Revisional Survey operation Khata No.209 was created & old plot No.121 was renamed as Plot No.103 in Revisional Survey Map to which the petitioner has no concern since the House of the petitioner's stands in Old Plot No.125 (part) under Khata No.258 recorded as Malik Gairmazarua in Cadastral Survey Khatian & the Petitioner's ancestor were paying Malguzari rent to state of Bihar (Annexure-4) series. The petitioner is unaware as to how the Malik Gairmazarua Land in which the Petitioner has concrete House & the name of the petitioner's ancestor recorded in Register-II was allocated to Dalmia Cement Bharat Limited, since the Circle Officer issued Notice Under Section 5(1) to Bihar Public Land Encroachment Act, 1956 & threatened to demolish the House of Petitioner whereas Dalmia Cement Bharat Limited is private tenant, having status parallel to the petitioner, as such Provisions of Section 5(1) to Bihar Public Land Encroachment Act 1956 cannot be invoked to handover the possession to private party by demolishing house of the petitioner, particularly when (1) the petitioner is paying malguzari rent to the state concerning those land & (2) the house of the petitioner is situated in Old Plot No.125 (part) under Khata No.258 recorded as Malik



Gairmazarua in Cadastral Survey Khatiyan (3) The circle officer wants to perpetuate the mistake of Revisional Survey Authority who had illegally encroached the part Plot No.125 under Khata No.258 & amalgamated part of the land to part Plot No.125 in Plot No.121 (old), & the same was intentionally made in order to advance benefit to Dalmia Nagar Cement Company, who owns Plot No.121 (old), while Plot No.125 (old) owns by Ex-intermediary Jamindar as such Plot No.125 (old) is Malik Gairmazarua in which the petitioner & others have their House since more than 50 years. (4) The Circle Officer under influence of Dalmia Nagar industries wants to rely on Revisional Survey Map in order dislocate the petitioner while the petitioner prays & request to verify cadastral survey map to confirm the facts pleaded by the petitioner as such old Plot Number & old Khata Number is not mentioned in the notice issued by Circle Officer & (5) The circle officer has wrongly issued Notice marking the House of the petitioner situated in Plot No.103 under Khata No.209 whereas the house of the Petitioner is situated in part Plot No.125 under Khata No.258 & this facts can be verified from the Cadastral Survey Map as such ignoring the Cadastral Survey Map & further ignoring the entries in Tenant Ledger Register-II the Circle Officer instituted Land Encroachment Case No.15/23 as such present application is being filed commanding the respondents for following main reliefs:-

(1) That for issuance of appropriate writ, order or direction commanding the respondents that the provisions of Section 5(1) to Bihar Public Land Encroachment Act, 1956 cannot be invoked for the



benefit of private party i.e. Dalmia Cement Bharat Limited particularly when the petitioner has Pucca House in the same Land since more than 50 years & particularly the fact that intermediaries Jamindar submitted return in the name of the petitioner & the name of ancestor of the petitioner recorded in Register-II as such a declaration be issued that provisions of Section 5(1) to Bihar Public Land Encroachment Act, 1956 cannot be invoked on Private Land.

That for issuance of appropriate writ, order or direction commanding the respondents not to indulge in Title Disputes concerning Private Land on the basis of entries in Revisional Survey since the Revisional Survey entry does not create Title as such the authority cannot exercise power under Section 5(1) to Bihar Public Land Encroachment Act, 1956 since the Dalmia Cement Bharat Limited which was declared as Khatiyani Raiyat in Notice issued in Land Encroachment Case No.15/23 is private person as such provisions of Section 5(1) to Bihar Public Land Encroachment Act, 1956 cannot be invoked to handover the possession to private person since status of Dalmia Cement Bharat Limited is parallel to the petitioner as such provisions of Section 5(1) to Bihar Public Land Encroachment Act, 1956 cannot be used in oppressive manner in Private Title Disputes particularly concerning those lands in which there is Private Pucca House & the petitioner's ancestor was paying Malguzari to the state & their name is recorded in Register- II as such a suitable direction may kindly be issued that Section 5(1) to Bihar Public Land Encroachment Act, 1956 cannot be used in oppressive manner.



(iii) That for issuance of appropriate writ, order or direction commanding the respondents not to interfere in physical possession of Concrete House (Pucca Makan) standing in Old Plot No.125 (part) under Khata No.258 recorded as Malik Gairmazarua in Cadastral Survey Khatiyan & the Petitioner's ancestor were paying Malguzari rent to Ex-intermediary Jamindar & the Jamindar submitted return at the time of Vesting & subsequently name of petitioner's ancestor Kauleshwar Son of Tapshi & others were recorded in Tenant Ledger i.e. Register-II (Annexure- 4) series & was paying Malguzari Rent to state & all this Facts can be Verified from Tenent Register-II & Cadastral Survey Map by which the Case of the petitioner can be easily evaluated whereas in Revisional Survey full of mistakes were committed as such Respondent Circle Officer intentionally ignored Cadastral Survey Map & Register-II entries & illegally instituted Land Encroachment Case No.15/23 & issued Notice mentioning Plot No.103 under Khata No.209 which is concerning Revisional Survey while the details of Cadastral Survey Khatiyan was intentionally not recorded in order to advance benefit to the respondent No.5 as such a direction may kindly issued commanding the respondent not to interfere in the physical possession of the petitioner's ancestor house.

(iv) That for issuance of appropriate writ, order or direction commanding the respondents to apply correct Cadastral Survey map instead Revisional Survey Map & verify the genuineness of Return submitted by intermediaries Jamindar & further verify the rent receipt issued by intermediaries Jamindar & Rent receipt issued by State of Bihar earliest in Sixties (Annexure- 4) & not



to interfere in the physical possession of Concrete House (Pucca Makan) standing in Old Plot No.125 (part) under Khata No.258 recorded as Malik Gairmazarua in Cadastral Survey Khatian.”

At the outset, the learned counsel for the respondent-State has referred to the counter affidavit, filed in the present case to submit that the final order has already been passed by the Circle Officer, Dehri on 23.03.2023, under Section 6(1) of the Bihar Public Land Encroachment Act, 1956, in connection with Encroachment Case No.15 of 2022-23.

In view of the aforesaid, the learned counsel for the petitioners seeks liberty on behalf of the petitioners to challenge the aforesaid order dated 23.03.2023, by filing appropriate Appeal under Section 11 of the Bihar Public Land Encroachment Act, 1956. Liberty so sought is granted.

The present writ petition stands disposed off, however, with the aforesaid liberty.

(Mohit Kumar Shah, J)

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