

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11443 of 2023

Mirza Jalaluddin Beg @ Jalalludin Beg Son of Mirza Alauddin Beg Resident of Village-Sikandra, Post officer-Sikandra, Police Station-Sikandra, District-Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Commissioner, Jamui.
4. The District Magistrate, Jamui.
5. The Additional Distirct Magistrate, Jamui.
6. The Additional Collector, Revenue, Jamui.
7. The Circle Officer, Anchal Sikandra, Police Station-Sikandra, District-Jamui.
8. Azhar Siddique Son of Late Hasan Imam Resident of Village-Sikandra, Post Office-Sikandra, Police Station-Sikandra, District-Jamui.
9. Hassan Siddique Resident of Village-Sikandra, Post Office-Sikandra, Police Station-Sikandra, District-Jamui.
10. Athar Siddique Resident of Village-Sikandra, Post Office-Sikandra, Police Station-Sikandra, District-Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bijay Kumar Pandey, Advocate
		Mr.Abdul Wadood, Advocate
For the Respondent/s	:	Mr.Sajid Salim Khan (SC-25)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-10-2023

The writ petition is filed as a Public Interest Litigation, seeking directions to the District Magistrate, Jamui for removing encroachment from Plot No. 2234, 2292 and 2224 of Khata No. 454. It is stated that these plots are mentioned as



house and Kachhari in Khatiyani, which belong to Government of Bihar but the set of respondents arrayed as 8, 9 and 10 have encroached upon the same. It is also pointed out that by CWJC No. 13455 of 2016, the petitioner himself has approached this court for removal of encroachment from the very same properties which was disposed of by directing the District Magistrate, Jamui to act in accordance with law, as per the observations made in *Sanjay Jha v. State of Bihar, 2015 SCC OnLine Pat 9426*. The the party respondents had filed review in which it was contended that they were not encroachers and were title holders. It was clarified that there is no finding in the judgment under review that the review petitioners were encroachers. It was clarified that the District Magistrate, Jamui would consider the factum of encroachment only after hearing the review petitioners also and pass a speaking order again in accordance with the observations in *Sanjay Jha (supra)*. The review petition was dismissed even after the same, nothing has been done by the District Magistrate is the contention raised.

2. A counter affidavit is filed on behalf of Respondent Nos. 4 to 7 asserting that the writ petition is not maintainable, especially in view of the earlier proceedings taken by the very same petitioners for removal of encroachment from



the very same property. It is also specifically alleged that the petitioner is an interested person, since his father had filed a partition suit for the subject land which is pending as Title Suit No. 38 of 1986, *Mirza Alaluddin Beg v. Navav Majhar Siddiqui*. In fact it is pointed out that after the judgment in CWJC No. 13455 of 2016, the District Collector had considered the issue and rejected the claim of the petitioner by Annexure-A, finding the claim to be not unsustainable, especially when a title suit is pending in the matter and there is no discomfort to the public, warranting invocation of Section 133 of the Cr.P.C. Annexure-A has been passed on 15.09.2023 before which the writ petition was filed. However, we have to notice that the petitioner has not disclosed his interest in the writ petition nor has he spoken of the title suit which his own father filed before the Civil Court.

3. We find no reason to entertain the Public Interest Litigation and find that the petitioner has attempted to canvas his personal interest in the Public Interest Litigation. The petitioner has attempted to further the case of this father before the Civil Court by attempting eviction of the party respondents, alleging that they are rank encroachers. Even, if they are encroachers the proper remedy is under the Bihar Land



Encroachment Act, 1956 (for brevity “Act”). In the circumstance of the pending civil suit, even an application for removal of encroachment under the Act would not lie and we find the Public Interest Litigation to be a clear abuse of process of law.

4. We hence, dismiss the writ petition with a cost of Rs. 10,000/- which shall be paid to the Bihar State Legal Services Authority within a period of 1 month failing which the authority would be entitled to recover it as per the procedure for recovery of ‘arrears due on land revenue’.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2023
Transmission Date	

