

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.570 of 2021

In
Civil Writ Jurisdiction Case No.13936 of 2019

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1. The State of Bihar Through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
 2. The Divisional Commissioner, Division-Patna, District-Patna.
 3. The District Magistrate, Nalanda, District-Nalanda.
 4. The Sub-Divisional Officer, Rajgir, District-Nalanda.
 5. The Circle Officer, Ben, District-Nalanda.
 6. The Station House Officer, Police Station-Ben, District-Nalanda.

... .. Appellant/s

Versus

Dhiraj Kumar Son of Late Chandrika Singh Resident of Village-Jago Bigha,
P.O.-Aat, P.S.-Ben, District-Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Khurshid Alam, AAG-12 Ms. Nutan Sahay, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar, Advocate Mr. Niraj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

8 10-01-2023 Heard Mr. Khurshid Alam, learned Additional

Advocate General No. 12, assisted by Ms. Nutan Sahay

for the appellant/State and Mr. Sanjay Kumar assisted

by Mr. Neeraj Kumar, learned Advocates for the sole

respondent.

By the order impugned passed by the learned



Single Judge in C.W.J.C. No. 13936 of 2019, a direction was issued to the State to restore the demolished portion of the house of the respondent which he had constructed over his land pertaining to Khata No. 845, Plot No. 4152 at Mauja Aat, Village - Joga Bigha, Circle-Ben in the District of Nalanda, which was illegally demolished on 12.06.2019 by the demolition squad on the instruction of the Circle Officer, Ben.

On 18.10.2022, this Court had, while hearing this appeal observed as follows:

"We do not have any quarrel with the proposition that if the right of property of a citizen is interfered with in a wrong and unauthorized manner or his right stands emasculated even to a small extent, such citizen deserves to be compensated. However in the present case, it has been urged on behalf of the appellant/State that the respondent had been successively encroaching upon the government land and in that context and background, if there was any breach of the provisions contained in the Act of 1956 in the sense that notices were issued to the respondent in an already closed proceeding,



the learned Single Judge ought not to have been so harsh on the authorities as to have directed for construction of the demolished portion of the house and for payment of compensation of Rs. 1,00,000/- to the respondent.

The proposition urged on behalf of the State cannot be absolute. It can only be appreciated if it is found, in an objective manner, that the demolished portion of the house of respondent stood on the land which was not his but on the encroached land.

We are of the view that in case it is found that there was no encroachment and that because of some misconception or wrong handling of the matter, the portion of the house of the respondent was demolished at the behest of the State Authorities, this Court would be absolutely loath in interfering with the order directing or reconstruction and payment of compensation but not vice versa.

In case it is found that the petitioner has again encroached upon the public land, then any aberration in carrying out the provisions contained in the Act of 1956 would not entitle the respondent to be paid compensation or for the demolished house to be reconstructed at the expense of the State.

A wrong doer cannot take



advantage of his wrong doing.

Under the aforesaid circumstances, we expressed our intention before the learned counsel appearing for the parties that it would be appropriate and in the fitness of the things that there should be a fresh measurement of the lands belonging to the respondent under the supervision of the District Magistrate of the concerned District.

The aforesaid proposal of the Bench was initially not acceptable to the learned counsel for the respondent for the reason that such proceedings should come to an end and should not be continued for indefinite period. It was submitted by him that on several occasions his lands have been measured not only by Government / private Amins but by a team constituting Government and private Amins and therefore any further exercise would only put the respondent to harassment and nothing more. He further submits that in case the Bench directs for re-measurement under the supervision of the District Magistrate of the concerned District, necessary direction be also issued to carve out the Gair Majarua Aam land, some part of which is alleged to have been encroached upon by the respondent.

Such a suggestion makes no sense



to us as if the land as described in the sale deed or any document of title to be furnished by the respondent is found to be identified and demarcated then it would be the easiest exercise to find out whether the demolished house stood on the riyati land of the respondent or on the encroached land.

Be that as it may, for the satisfaction of the parties, especially in view of the fact that such an exercise has been repeatedly done in the past, we direct that on the appellant/State bringing to the notice of the concerned District Collector a copy of this order within a period of one week from today, the Collector shall embark upon the process of getting the land belonging to the petitioner measured.

Before doing that, he shall find out two persons having good knowledge and experience of Amanat, who shall obtain from the respondent the title documents and shall carve out the property belonging to the respondent.

The Gair Majarua Aam land shall also be measured so that there is no further comment on the lands belonging to the private party and the Gair Majarua Aam land being doubted for lack of proper demarcation. The whole exercise ought to be completed within a



period of 30 days thereafter. The process of measurement shall be supervised by an Officer to be nominated by the District Collector.

A report then shall be submitted by the Collector to this Court under sealed envelope by the next date fixed in this case.

All this exercise has been directed by us keeping in mind the importance of preservation of the right to property of a citizen as also his responsibility of not encroaching upon any part of the government land. Such exercise was found to be necessary by us for the reason that the learned Single Judge, only on the ground of the respondent having been noticed for removal of encroachment at the instance of the Bihar Public Grievance Redressal Cell and also after an encroachment proceeding had come to an end, had directed for payment of compensation and reconstruction of the demolished portion of house of the respondent. If the right of the citizen is to be preserved and protected, equally important is the State right of maintaining order in the society that public land or private land may not be encroached by land-grabbers."

Pursuant to the aforementioned direction, a fresh measurement was done by a different set of *Amins* and



a report was submitted to this Court under sealed cover along with an affidavit of the L.R.D.C. who was authorized by the District Magistrate, Nalanda to swear the affidavit.

This Court had made available to the parties the copies of the report, which has been read over before us by both the contesting parties.

We find from the report that the structure of the respondent was erected on his rayati land and not on Gairmajarua land. There could have been some confusion because of different measurement by different set of *Amins* but ultimately it was found that 0.79 decimals of land was wrongly shown to have been encroached upon by the respondent.

While undertaking the task of demolition, it was obligatory of the State authorities to be extra careful in not disturbing the property rights of an individual or else the basic right of a citizen would stand emasculated. We have noted in our earlier order that property right may



not be a fundamental right but is definitely a constitutional right which also has to be zealously guarded by the State.

In such a fact situation, we are somewhat loath in interfering with the order passed by the learned Single Judge directing the State to get the demolished structure reconstructed within a period of two months and pay Rs. 1,00,000/- as compensation to the respondent. However, for the sake of convenience of the parties, we after deliberation, quantify the aforesaid direction to a total of Rs. 4,00,000/- (inclusive of the amount of compensation).

Let that amount be paid to the respondent without any delay, preferably within a period of 90 days from the date of receipt/production of a copy of this order before the District Magistrate, Nalanda (Respondent No.3).

The impugned order is thus modified accordingly.



The appeal stands disposed of in terms of the
above.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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