

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15478 of 2019

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Kamlesh Paswan, Son of Late Basdeo Paswan, Resident of Deo Godown Par,
P.S. Deo, District Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Additional Collector, Aurangabad.
5. The Anchal Adhikari, Deo, Distt. Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Advocate
		Mr. Ashish Giri, Amicus Curiae
		Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General
		Mr. Sarvesh Kumar Singh, AAG-13
		Mr. Rajat Kumar Tiwari, A.C. to AAG-13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-04-2023

The above writ petition, in public interest, is filed



to remove the encroachment in a pond and a land adjacent to a temple, both of which were alleged to be properties owned by the temple. The temple is called the Hindu Surya Mandir where during Chhath festival about 6-8 lac devotees throng and there are various facilities like Dharamshala, Bus Stand, Yatri Sheds, eatery joints etc., which are being provided by the local authorities. In addition to the encroachments on the pond, it is also alleged that in Khata No. 347, Plot No. 1818 having an area of 3 acres 35 decimals properly known as Doma Pokhar is also the property of the temple where earlier it was recommended for construction of Yatri Sheds. It was alleged that the land mafia has encroached upon 1/4th extent of the pond and despite directions issued by the Sub Divisional Officer, the Circle Officer did nothing to remove the encroachment. It was also alleged that the Additional Collector, Aurangabad on 03.05.2018 passed an order requiring the Circle Officer to ensure compliance of the order of the Sub Divisional Officer, which is also ignored.

This Court appointed an *Amicus Curiae* and also directed the State to file an affidavit as to the steps taken to remove the encroachment. Later, proceedings were taken under the Bihar Public Land Encroachment Act, 1956 in which the



alleged encroachers were also permitted to be impleaded, to take appropriate defence. This Court further had discussions with the District Magistrate, Aurangabad who undertook that appropriate action would be taken to demarcate the public land, remove the encroachments and also restore the water body i.e. the pond spread over 3.35 acres of land, which cater to the needs of the famous temple of historical importance. He also assured the Court that a boundary wall or fencing of the area would be carried out to ensure that the area is not encroached in future. Later, an affidavit dated 11.11.2022, in compliance of the undertaking, was filed by the District Magistrate, Aurangabad upon which the *Amicus Curiae* was directed to carry out physical inspection of the premises along with the learned Additional Advocate General- 13 and file a report.

Today, the learned *Amicus Curiae* Shri Ashish Giri has filed an Inspection Report with photographs. We have carefully gone through the report filed after a physical inspection of the site carried out along with learned Additional Advocate General-13, the Circle Officer, the Assistant Pujari and the Temple Secretary. Having visited the temple premises, photographs were taken, produced as Enclosure-1 series, which indicates the temple pond having been restored. Enclosure- 1



series shows the area in and around the temple. Enclosure-2 series are photographs revealing two water bodies of the temple called Surya Kund and Doma Pokhar, the later renamed as Rudrakund/Purain Pokhar. Both the said water bodies lie near to each other, around half a kilometer away from the temple which access and ponds are now completely encroachment free and fenced from all sides, as seen from Enclosure-2 series of photographs.

The Circle Officer also informed the *Amicus Curiae* that the Suraj/Suryakund falls in Khata No. 347, Plot No. 1880, as is evident from the records of the cadastral survey, the photo-copy of the extract of which is also produced as Enclosure-3. Similarly, the Doma/Rudra/Purain Pokhar is located in Khata No. 347, Plot No. 1882 of the cadastral survey. Plot No. 1818, on which also the petitioner raised a claim, is obviously not one belonging to the temple and is a dry stretch of land, which is not a Government land but Raiyati land of a private individual. The photographs of the said area was also taken and produced as Enclosure-4 series. The petitioner who was present objected to the same. But, however, some reliance has to be placed on the submission made by the Circle Officer to the *Amicus Curiae* based on the Cadastral Survey Report.



We feel that the Public Interest Litigation has served its purpose and the encroached properties have been restored to the temple. We also make it clear that we have not observed on the merits of the title to Plot No. 1818 and have merely recorded the report of the *Amicus Curiae* based on the cadastral survey relied on by the Circle Officer. If the temple is of the opinion that the said land belongs to them, then appropriate proceedings could be taken by them against the private individual; for establishing the title and recovery of the property. We are of the opinion that the Public Interest Litigation has served its purpose. We take on record the report of inspection dated 04.02.2022 along with photographs, which will be incorporated in the records as Court Exhibit C/1. We direct the Circle Officer, Respondent No. 5, to ensure that there is no further encroachment made to the ponds which have been restored. We also direct the concerned Police Station to have regular patrols to ensure that no encroachment is made and if such encroachments are made, they are expeditiously evicted. The temple authorities would also be entitled to make a complaint of any encroachment before the Circle Officer and the jurisdictional police, who shall immediately spring into action and ensure removal of such encroachment.



The writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2023
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