

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13678 of 2022

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1. Sunil Kumar son of Late Amrit Singh, resident of Mohalla Duzra Road, P.S. Buddha Colony, District Patna.
 2. Malti Kumari, wife of Sri Sunil Kumar, resident of Mohalla Duzra Road, P.S. Buddha Colony, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Revenue and Land Reforms Department, Bihar, Patna.
2. The District Magistrate cum Collector, Gaya.
3. The Circle Officer, Bodhgaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Satyabir Bharti, Advocate Ms. Sushmita Sharma, Advocate Ms. Kanu Priya, Advocate Mr. Abhishek Anand, Advocate Mr. Prachi Pallavi
For the State	:	Mr. Md. Khurshid Alam (Aag12)
For the Intervenor	:	Mr. Surendra Kishore Thakur, Advocate Mr. Ashutosh, Advocate Ms. Y. Madhuri, Advocate Ms. P. Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 08-08-2023 1. The present writ petition has been filed seeking the following relief:-

“(i) quashing the entire proceedings initiated by the Circle Officer, Bodh Gaya vide Land Encroachment Case no. 04/2022-23, since the same is without jurisdiction, as disputed questions of title cannot be decided in a summary proceeding initiated under the Bihar Public Land Encroachment Act, 1956:



(ii) Issuance of a writ of certiorari, quashing the notice dated 17.08.2022, issued in Form I. under Section 3 of the Bihar Public Land Encroachment Act, 1956, by which, in an empty formality, on the direction of the Collecto, Goya presuming the petitioner no. 1 to be an encroacher, he has been directed to show cause as to why not the encroachment may not be removed.”

2. At the outset, the learned senior counsel for the petitioners has referred to the supplementary affidavit filed by the petitioners in the present case, paragraph no.7 whereof is being reproduced hereinbelow:-

“7. That the petitioner on an incorrect legal advice had preferred Title Suit No. 141 of 2020, before the Court of Sub Judge-I, Patna, which the petitioners have been made to understand that it lacks territorial jurisdiction as the Suit Property is situated outside the territorial jurisdiction of the learned Court. Hence the petitioners do not press the judgment and decree dated 08.04.2021, passed by the learned Court of Sub Judge I, Patna in Title Suit No.141 of 2020. However, the petitioners makes a categorical assertion that they have a valid title over the land and lands in question cannot even remotely be claimed to be public land.”



3. In view of the aforesaid admission on the part of the petitioners, the petitioners are prohibited from deriving any benefit emanating out of the aforesaid judgment and decree dated 08.04.2021, passed by the learned Court of Sub Judge-1, Patna in Title Suit No.141 of 2020.

4. It is the contention of the learned senior counsel for the petitioners that though the petitioners are having right, title and interest over the property situated at village Dhanawa, Thana No. 351, bearing Khata No 65(old): 166 (new), Khesra no. 32 (old); 86, 87, 94, 95 etc (new) having an area of 67 decimals and Khata No. 55 (old); 141 and 70 (new), Khesra no. 33(old); 85, 88, 89, 90, 91, 92 (new) having an area of 120 decimals, as also over the one situated at village Dhanawa, Thana No. 351, bearing Khata No. 65(old): 166 (new), Khesra no. 32 (old): 86, 87, 94, 95 etc (new) having an area of 68.74 decimals, which has been purchased by the petitioners by a registered sale deed, but still the Circle Officer, Bodh Gaya has initiated encroachment proceedings bearing Encroachment Case No.04 of 2022-23, which is not maintainable in the eyes of law, hence while granting liberty to the petitioners to file appropriate objections, the Circle Officer, Bodh Gaya be directed to first consider the issue of maintainability of the proceedings.



5. At this juncture, the learned senior counsel for the petitioners also seeks liberty on behalf of the petitioners to avail such other remedies, as are otherwise available under the law for redressal of their grievances, including that of filing civil suit before the learned Civil Court having competent jurisdiction. Liberty so sought is granted.

6. Having regard to the facts and circumstances of the case as also considering the submissions made by the learned senior counsel for the petitioners, I deem it fit and proper to grant liberty to the petitioners to file their objections, in connection with the aforesaid Encroachment Case No.04 of 2022-23, within a period of four weeks from today, whereupon the Circle Officer, Bodh Gaya shall take a final decision in the matter, by not only deciding the issue of maintainability of the encroachment proceedings in question but also passing the final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956, forthwith, and till then, status quo existing as on today, qua the land of the petitioners in question shall be maintained. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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