

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12742 of 2023

-
1. Mohd. Afzal Hussain Son of Late Mazhar Alam Resident of -Ward No.12, Kalibagh, Bettiah, P.S.- Kalibagh O.P. (Town P.S.), District- West Champaran (Bettiah).
 2. Mohammad Salauddin @ Mohd. Salauddin Hussain, Son of Late Mazhar Alam Resident of -Ward No.12, Kalibagh, Bettiah, P.S.- Kalibagh O.P. (Town P.S.), District- West Champaran (Bettiah).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Municipal Corporation, Bettiah, West Champaran through its Municipal Commissioner.
4. The Municipal Commissioner, Municipal Corporation, Bettiah, West Champaran.
5. Firoz Ahmad Khan, S/o- Ifatiyak Khan, Resident of Ward No.12, Kalibagh, Bettiah, P.S. Kalibagh O.P. (Town P.S.), District- West Champaran (Bettiah).
6. District Magistrate, Bettiah (West Champaran)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shyam Sundar Kumar, Adv.
For the State	:	Mr.Kinkar Kumar, SC-9
		Mr.Ashutosh Kumar Upadhyaya, AC to SC-9
For the Municipal Corp.	:	Mr.Priyadashi Matri Sharan, Adv.
For the Respondent No.5:		Mr.Shashank Chandra, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 17-10-2023 1. The present writ petition has been filed seeking the following relief(s):-

“1.I) For Quashing the notice contained in Letter No.1908/Municipal Corporation, Bettiah dated 14.08.2023 issued under the signature of the Municipal Commissioner, Municipal Corporation, Bettiah, whereby and whereunder the petitioner



have been issued notice that on the basis of the application submitted by Firoz Ahmad Khan, measurement report submitted by the Ameen, Municipal Corporation, Bettiah, the petitioners have been found to be encroachers by making house of Khapra/Phus on the land bearing Khesra No.2551, Gairmazarua Malik, for which a notice was issued to the petitioners vide letter no.1653 dated 15.07.2023, to remove the encroachment within 15 days, but the same has not been removed, therefore the petitioners have been directed to remove the encroachment from the Government land within 07 days or else the same will be removed by using force and the expenditure incurred in removal of temporary encroachment to the tune of Rs.5000/- and permanent encroachment to the tune of Rs.20000/- will be recovered from the petitioners. The petitioners were directed to submit their show cause/stand by appearing before the Municipal Commissioner, Municipal Corporation, Bettiah on 19.08.2023 at 12.30 hours.

II)For Quashing the notice contained in Letter no.1653/Municipal Corporation, Bettiah dated 15.07.2023 issued under the signature of the Municipal Commissioner, Municipal Corporation, Bettiah, whereby and whereunder the petitioner were issued notice that on the basis of the application submitted by Firoz Ahmad Khan, measurement report submitted by the Ameen, Municipal Corporation, Bettiah, the petitioners have



been found to be encroachers by making house of Khapra/Phus on the land bearing Khesra No.2551, Gairmazarua Malik, therefore the petitioners were directed to remove the encroachment from the Government land within 15 days or else the same will be removed by using force and the expenditure incurred in removal of temporary encroachment to the tune of Rs.5000/- and permanent encroachment to the tune of Rs.20000/- will be recovered from the petitioners.

III) For Quashing the notice contained in Letter no.1852/Municipal Corporation, Bettiah dated 08.08.2023 issued under the signature of the Municipal Commissioner, Municipal Corporation, Bettiah, whereby and whereunder the petitioner were issued notice that on the basis of the application submitted by Firoz Ahmad Khan, measurement report submitted by the Ameen, Municipal Corporation, Bettiah, the petitioners have been found to be encroachers by making house of Khapra/Phus on the land bearing Khesra No.2551, Gairmazarua Malik, for which a notice was issued to the petitioners vide letter no.1653 dated 15.07.2023, to remove the encroachment within 15 days, but the same has not been removed, therefore the petitioners were directed to remove the encroachment from the Government land within 07 days or else the same will be removed by using force and the expenditure incurred in removal of temporary encroachment to the tune of Rs.5000/-



and permanent encroachment to the tune of Rs.20000/- will be recovered from the petitioners. The petitioners were directed to submit their show cause/stand by appearing before the Municipal Commissioner, Municipal Corporation, Bettiah on 12.08.2023 at 12.30 hours.

IV) For a direction upon the Municipal Commissioner, Municipal Corporation, Bettiah, to grant an opportunity to the petitioners to file their show cause, after hearing them and considering the show cause filed on behalf of the petitioners, direct for measurement of the land, alleged to have been encroached by the petitioners, by Government Ameen, in presence of the petitioners, after fixing a date for measurement of the land and till the same is not done, the alleged encroachment, alleged to have been found, be not removed.”

2. The learned counsel for the respondent-State, while referring to the counter affidavit filed in the present case, has drawn the attention of this Court to the joint inspection report dated 26.09.2023, to submit that though the land in question is *Gairmajarua Malik* land, however, no proper notice has ever been given to the encroachers, before proceeding against them.

3. The learned counsel for the Municipal Corporation submits that in case the authorities of the Municipal Corporation, Bettiah, West Champaran are sanguine about their



claim, to the effect that the land in question, being occupied by the petitioners is a *Gairmajarua Malik* land, they shall definitely demarcate the land in question and proceed in the matter as per the provisions contained in Section 435 of the Bihar Municipal Act, 2007.

4. On the contrary, the learned counsel for the petitioner submits that in case the authorities of the Municipal Corporation, Bettiah, West Champaran at Bettiah are of the view that the land being occupied by the petitioners is a *Gairmajarua Malik* land, they should be directed to first demarcate the land in question and then proceed as per the provisions contained under Section 435 of the Bihar Municipal Act, 2007 and till then the petitioners should not be disturbed. It is directed accordingly.

5. The present writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

sonal/-

U			
---	--	--	--

