

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1275 of 2023
In
Civil Writ Jurisdiction Case No.1583 of 2023

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S.M. Zafar Imam Son of Late S.M.Zareef, Resident of Mohalla-Quazina,
Benipur, Basuham, Police Station-Bahera, District-Darbhangha.

... .. Appellant/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar,
Patna.
2. The District Magistrate, Darbhanga at Darbhanga.
3. The S.D.O. Benipur, District-Darbhangha.
4. The Circle Officer, Benipur Anchal, Benipur, District- Darbhanga.
5. The Assistant Consolidation Officer, Darbhanga.
6. The Senior Incharge Officer of District Record Room, Darbhanga.
7. S.M.Naiyer Imam, son of Late S.M.Zareef, Resident of village and P.O. and
Police Station-Bahera, District-Darbhangha.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Lalit Kishore, Sr. Advocate

Mr. Sarvdeo Singh, Advocate

For the Respondent/s : Mr.Md. Khurshid Alam, (AAG-12)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 09-11-2023



Heard learned counsel for the parties.

2. The present appeal is directed against the judgment and order dated 19.10.2023 passed by the learned Single Judge in C.W.J.C. no. 1583 of 2023 by which the writ petition was dismissed while allowing the appellant-petitioner to avail such remedies as are otherwise available under the law.

3. The matrix of facts giving rise to the present appeal is/are as follows:-

4. The matter relates to Khesra nos.100, 101, 102 and 103, Mauza-Basuham, Circle-Benipur in the district of Darbhanga registered as 'Anabad Bihar Sarkar'.

5. The appellant-writ petitioner claimed that there is a 75 years old residential building situated on the said plot in which he along with his family members are/were residing.

6. Earlier, a case under section 106 of the B.T.Act was filed bearing Case No.316/2006 by the mother of the appellant-writ petitioner, namely Smt. Bibi Nabiul Fatima which was finally decided on 30.4.2009 and in place of '*Anabad Bihar Sarkar*' the name of his mother was registered.

7. Later, a notice was issued for the removal of encroachment from the said land which was challenged in C.W.J.C.No. 9495 of 2012. It was disposed of on 12.04.2013



with a direction not to take any coercive step till a final order is passed.

8. The Circle Officer, Benipur once again in proceeding vide case no. 23/2011-12 issued notice for removal of encroachment. Although, the notice served was duly replied, however, an order came to be passed on 02.08.2021 directing him to remove the encroachment. This followed the direction issued by the Circle Officer, Benipur by which the appellant-writ petitioner was asked to submit evidence regarding his Title as the documents produced were verified from the District Central Room, Darbhanga and were not found to be forged. The appellant-writ petitioner thereafter took the route to writ Court.

9. The contention of the State before the writ court was/were that:

(i) in connection with order dated 27.07.2011 in CWJC No. 17282 of 2010 [Ram Lakhan Singh (Ramu) vs. State of Bihar & Ors.] the Encroachment Proceeding No. 23/2011-12 was initiated against 39 persons which included the writ petitioner;

(ii) further, pursuant to the order dated 18.03.2023



in the writ petition by the learned Single Judge, the District Magistrate, Darbhanga constituted an enquiry committee under the Chairmanship of the Additional Collector, Darbhanga;

(iii) later, the enquiry committee along with its officials visited the land in question, it was properly measured and verified in the presence of the writ petitioner, local representatives as also other villagers. However, the petitioner chose not to put in his signature on 27-03-2023 and consequently, the Additional Collector, Darbhanga submitted the inquiry report vide memo no 933 / R dated 28-03-2023;

(iv) as per the report, new Kheshra no. 100 and 101 have been carved out (from the old Kheshra no. 86) and the nature of the land in both i.e. cadastral Survey and revisional survey, it has been recorded in the name 'Gairmajurua Aam' and 'Anavad Sarv Sadharan' respectively. In other words, it is a public land exonerated by the appellant-petitioner;

(v) further, as per the report, the petitioner's



mother namely Naviul Fatima died on 01-10-2005 whereas according to the appellant-petitioner Title Suit no. 316/2006 under section 106 of the B. T. Act was filed in the year 2016;

(vi) further his brother, Dr. S.M Naqui Imam and Shri S.M Nair Imam stated that their mother died on 01-10-2005 and thus the decree obtained in Title Suit no. 316 of 2006 under section 106 of the B.T. Act is/was forged.

10. The brother of the appellant-writ petitioner also appeared as respondent no. 7 in the writ petition and supported the stand of the State alleging that forged documents have been used by his brother.

11. The learned Single Judge thereafter vide an order dated 19.10.2023 held as follows:

“This Court would also delve into another aspect of the matter i.e., in case, the petitioner is sanguine that disputed question of right, title and interest qua the land in question exists, although this Court has already held herein above that there is no dispute that the land in question is a public land meant for rasta (road), the petitioner can either bring the same to the notice of the authorities i.e. may be by filing an appeal under Section 11 of the Act, 1956, against



the final order dated 02.03.2023, passed by the Circle Officer, Benipur, under Section 6(1) of the Act, 1956 or avail such other alternative remedies as are otherwise available under the law including that of filing a civil suit before the competent Court of civil jurisdiction.

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the present writ petition stands dismissed, however, status quo existing as on today qua the land/house of the petitioner in question shall be maintained for a period of two weeks from today in order to enable the petitioner to avail such remedies as are otherwise available under the law.”

12. Thus, the learned Single Judge dismissed the writ petition while allowing him to avail such remedies as available under the law.

13. Aggrieved, the present appeal has been preferred.

14. Learned Senior Counsel appearing on behalf of the appellant-petitioner submits that although the learned Single Judge allowed him to avail remedies under the law, simultaneously it arrived at a finding which will greatly



prejudice his cause.

15. The State Counsel as also the learned counsel for the respondent no. 7 (brother of the appellant) opposed the prayer submitting that the appellant has presented his case on the basis of forged documents for which FIR has also been instituted against him.

16. We are not going into the merits of the case. The appellant- writ petitioner has suffered and there is an order against him passed by the Circle Officer, Benipur on 02.08.2021 in Encroachment Case No. 23/2011-12. Against the said order, he has remedy under the law to move before the appropriate authority

17. The learned Single Judge in the aforesaid background rightly directed the appellant-petitioner to avail such remedies as otherwise is available under the law. However, while granting the same, the Court should have refrained from holding that the land in question is a public land leaving the same open for the authority concerned to decide.

18. Thus, we hold that if the appellant-petitioner chooses to challenge the order of the Circle Officer, Benipur in connection with Case No. 13/2011-2012, the same shall be decided on its own merit and the findings arrived at by the



learned Single Judge shall not be taken into consideration.

19. The interim protection granted by the learned Single Judge is extended to the appellant-petitioner relating to his land/house, if he files the appeal within two months from today.

20. The appeal is accordingly partly allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish-Neha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.11.2023
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