

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.887 of 2020

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1. Ramashray Roy @ Ramshray Ray S/o Late Jagnath Roy Resident of Village and Mauza- Jagannathpur, P.s. and Anchal- Biraul, District- Darbhanga
 2. Sobha Kant Roy S/o Late Dina Nath Roy Resident of Village and Mauza- Jagannathpur, P.s. and Anchal- Biraul, District- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, patna
2. The Commissioner Darbhanga Division, Darbhanga, District- Darbhanga
3. The Collector Darbhanga, District- Darbhanga
4. The D.C.L.R. Biroul, District- Darbhanga
5. The Sub Divisional Officer Biraul, District- Darbhanga
6. The Anchal Adhikari Biraul, P.s.- Biraul, District- Darbhanga
7. Gajendra Narayan Roy S/o Late Muneshwar Roy @ Shyam Sundar Roy Resident of Village and Mauza- Jagannathpur, P.s. and Anchal- Biraul, District- Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate
For the Respondent/s	:	Mr. Ravindra Kumar Shukla
		Mr. Manish Jha, Advocate
		Mr. Rituraj Shukla, Advocate
For the State	:	Mr. Rishi Raj Sinha, (SC-19)
		Mr. Atul Shankar(AC to SC-19)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 31-01-2023 Heard the parties.

2. This Court vide order dated 10.01.2023 had passed
the following order:

“Heard the parties.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner has been running from pillar to post since 27.10.2011 and now after direction of this Court, in the present writ petition, belated action has been taken by the State



Authorities.

Mr. Atul Shankar, learned AC to SC-19 submitted that Encroachment Case No. 41/22-23 has already been initiated under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “1956 Act”). Notices have already been issued to the alleged encroachers on 10.12.2022 as per the provision of Section 3 of the 1956 Act. He submitted that there is mandatory provision of 15 days for seeking show cause. He informed this Court that in view of mandatory provision, some more time may be granted for removing the encroachment in accordance with law as there is also requirement of Section 6 (1) and 6(2) of the 1956 Act.

The Collector, Darbhanga is directed to take appropriate action in accordance with law and for any laches he must take up the matter against the concerned Circle Officer for taking disciplinary action against him.

List this matter on 31.01.2023.”

3. Today, a counter affidavit has been filed on behalf of private respondent no. 7-Gajendra Narayan Roy in which a specific statement has been made that the Title Suit No. 242 of 1908 with respect to certain khatyani lands were filed by the grandfather of the respondent no. 7. It is stated in the counter affidavit that the public land is situated in front of the respondent no. 7. As per the old cadastral survey record the road was measuring 10 feet wide and 110 feet length road was existing. Presently, 17 feet wide and 200 feet length exist. The State Government has constructed the road over 1 katha 16 dhur but



the counter affidavit is devoid of any dimension of the road. It is further submitted in the counter affidavit that a Title Suit No. 62 of 2018 is pending before the Court of learned Munsif, Biroul Darbhanga in which the State has not tender its appearance soon after being acquainted with the order dated 10.01.2023. As a result title suit has proceeded ex-parte against the State and date for evidence is fixed for 22.08.2022. The respondent no. 2 has also filed counter affidavit in compliance of the order dated 10.01.2023 bringing on record, the action taken by District Magistrate(respondent no. 3) that a committee was constituted and in paragraph no. 7 it is stated hereunder:

“That it is further respectfully submitted that the enquiry committee under the chairmanship of the Sub-Divisional Public Grivance Redressal Officer, Biraul, Darbhanga has made proper information to the petitioners so that the inquiry be conducted in the immediate presence of the petitioners and pursuant to the arranged date and time, the inquiry committee along with its officials has visited the spot in question and the land in question appertaining to plot no.199 (New) situated in village/mauja-jagannathpur, Thana no-95, Biraul, Darbhanga has been properly verified in the immediate presence of the petitioner and other villagers and accordingly, the Sub-Divisional Public Grivance Redressal Officer, Biraul, Darbhanga vide letter No.-418 dated 27.12.2022 (Ann. B series) has submitted its report connoting the material requisites i.e.



जाँच के समय उपस्थित अंचल अधिकारी, बिरौल से उक्त बाद में सन्निहित भूमि के सन्दर्भ में पृच्छा करने पर उनके द्वारा बताया गया कि अंचल कार्यालय, बिरौल में पूर्व से कोई वाद संधारित नहीं था। माननीय न्यायालय के उक्त आदेश के पश्चात वाद दायरकर्ता रामाश्रय राय से सम्पर्क करने पर ज्ञात हुआ कि सड़क की भूमि मौजा- जगरनाथपुर, थाना संख्या-95, खाता- 175, खेसरा-199, अनावार सर्वसाधारण किस्म रास्ता की भूमि में से 03 डी० भूमि का कर लिया गया है। जानकारी प्राप्त होते ही अतिक्रमण वाद की कार्यवाही वाद संख्या-41/22-23 के माध्यम से प्रारम्भ की गई तथा अंचल अमीन से अपनी उपस्थिति में सन्दर्भित भूमि की मापी कराकर धारा-3(1) के अन्तर्गत अतिक्रमणकारी गजेन्द्र नारायण राय पिता मुनेश्वर राय को प्रपत्र-1 की सूचना निर्गत की गई है। अविलम्ब वाद की कार्यवाही पूर्ण करते हुए अतिक्रमित भूमि को खाली करा दी जाएगी (अंचल अधिकारी, बिरौल द्वारा प्रस्तुत अभिलेख की छायाप्रति संलग्न) निष्कर्ष :-

उपरोक्त जाँच से स्पष्ट होता है कि वर्तमान में बाद में सन्निहित 03 डी० भूमि अतिक्रमित है। अंचल अधिकारी द्वारा उक्त आलोक में अतिक्रमण वाद संख्या-41 / 22-23 प्रारम्भ की गई है तथा अतिक्रमणकारी को एक नोटिस निर्गत किया गया एवं वाद की कार्यवाही प्रक्रियाधीन है। अंचल अधिकारी, बिरौल के कथनानुसार उक्त भूमि को शीघ्र ही खाली करा दी जायेगी।”

4. On perusal of Annexure E and E1 show cause has been sought from the concerned Circle Officers who were responsible for any encroachment which has taken place under their jurisdiction.

5. Having heard the rival submission of the parties and the evidence on record, it will proper for this Court to direct the



District Magistrate, Darbhanga to issue notice to the respective parties who are affected by the proceeding initiated in connection with Encroachment Case No. 41 of 2022-23.

6. The respondent no. 7 has made specific statement that it is the responsibility of the State Government to appear in Title Suit No. 62 of 2018 pending before the Court of learned Munsif Biroul Darbhanga.

7. In such circumstances, the District Magistrate, Darbhanga is required to seek measurement of the public road as mentioned in the cadastral survey and if encroachment beyond the same is found, should not be disturbed, till the pendency of the injunction petition filed by the respondent no. 7 is finally disposed of after hearing the parties.

8. Accordingly, the Collector is directed to dispose of the appeal duly preferred by respondent no. 7, in the light of the above observation made in this order.

9. Accordingly, the present writ petition, stands disposed of.

(Purnendu Singh, J)

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