

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.395 of 2024

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Ajay Kumar Singh Son of Rajendra Singh Resident of Allauddinchak, P.O.
and Police Station- Punpun, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Second Appellate Authority, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Additional District Magistrate, Masaurhi, Patna.
5. The Sub-Divisional Police Officer, Masaurhi, Patna.
6. The Deputy Superintendent of Police, Patna.
7. The Sub Divisional Officer, Masaurhi.
8. The Circle Officer, Punpun.
9. The Deputy Collector Land Reforms Officer, Masaurhi, District- Patna.
10. The Station House Officer, Punpun Police Station, District- Patna.
11. Vikram Kumar, @ Vikram Singh, Son of N/A, Resident of Village- Akauna,
Post Office-Punpun, Police Station- Punpun, District -Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pravashankar Mishra, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, GA-2
		Mr. Venkatesh Kirti, JC to GA-2

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 12-08-2024

The present writ petition has been filed for quashing the orders dated 10.11.2023 and 23.12.2023, passed by the District Magistrate-cum-Second Appellate Authority, Patna in Second Appeal No. 428118028092203512/2A, whereby and whereunder the Circle Officer, Punpun has been directed to ensure that the land in question is made



free from encroachment.

2. The brief facts of the case, according to the petitioner, are that the petitioner purchased a land appertaining to Khata No.166, Survey Khesra No. 839, Thana No.57, situated at Mauja-Manorah from one Sarojani Devi, by means of a sale deed bearing sale deed no. 6528 dated 04.09.2020, registered under the District Registry Office, Patna. In fact, the petitioner also claims to be a bonafide owner of a part of the land, appertaining to Khata No.133, Khesra No. 842, Thana No.57, situated at Mauja-Manorah and 2.171 decimal land thereof, has been stated to have been mutated in the name of the petitioner as also Jamabandi No. 61 is existing in his name.

3. It is further submitted by the learned counsel for the petitioner that one Vikram Kumar is stated to have filed a complaint under the provisions of the Bihar Public Grievance Redressal Act, 2015 (hereinafter referred to as the 'Act, 2015'), *inter alia* alleging therein that encroachment has been made over 88 decimals of land, appertaining to Plot



No. 133, Khesra No. 842, Thana No. 57, Mauza-Manorah, leading to filing of a second appeal, as aforesaid, wherein the second appellate authority, by the impugned orders dated 10.11.2023 and 23.12.2023, has directed the Circle Officer, Punpun to remove the encroachment in question. It is contended that neither the petitioner has ever been informed nor communicated about the aforesaid proceedings in question and by an *ex parte* order as also behind the back of the petitioner, the Second Appellate Authority has directed for removal of the encroachment in question. It is stated that the petitioner has purchased the land in question and the same is his raiyati land, hence there is no question of the petitioner having made any encroachment. Another aspect of the matter, canvassed by the learned counsel for the petitioner is that under the provision of the Act, 2015, no directions can be issued for removal of encroachment inasmuch as in case any encroachment has been made over the public land/*gairmajarua aam* land, the same has to



be dealt with under the provision of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act, 1956').

4. *Per contra*, the learned counsels appearing for the respondent-State and for the private respondent no. 11 have though tried to support the impugned orders dated 10.11.2023 and 23.12.2023, passed by the District Magistrate, Patna-cum-Second Appellate Authority, however, they have not been able to deny the fact that under the garb of the Act, 2015, no complaint pertaining to encroachment made over public/ government land can be entertained much less any order can be passed by the concerned authority for removal of the encroachment in question and if at all encroachment has been made over a public land, the same is required to be dealt with under the provision of the Act, 1956.

5. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be apt to reproduce the definition of "**complaint**" as defined under **Section 2(a) of**



the Bihar Right to Public Grievance Redressal, Act, 2015 herein below:-

“2(a)-Complaint means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005 (Central Act no. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011.”

6. A bare perusal of the aforesaid definition of **“complaint”** would show that the authorities/Appellate Authority under the **Bihar Right to**



Public Grievance Redressal, Act, 2015 are not empowered to entertain any complaint pertaining to encroachment made over the public/ Government land, inasmuch as the same is governed by the provisions contained in the **Bihar Public Land Encroachment Act, 1956**, hence, the District Magistrate-cum-Second Appellate Authority, Patna has committed a grave error by assuming the role of an authority under the provision of the Bihar Public Land Encroachment Act, 1956, although he has got no jurisdiction or power to either entertain any complaint pertaining to encroachment or pass any order regarding removal / demolition of the encroachment in question, hence, on this ground alone, this Court finds that the orders dated 10.11.2023 and 23.12.2023, passed by the District Magistrate, Patna-cum-Second Appellate Authority in Second Appeal No. 428118028092203512/2A are perverse, illegal, *mala fide* and *de hors* the provisions of law, hence, fit to be set aside.

7. Even otherwise, this Court finds that the act



and conduct of the District Magistrate-cum-Second Appellate Authority, Patna, in passing the aforesaid impugned orders dated 10.11.2023 and 23.12.2023, is against the constitutional mandate, provided for under Article 300A of the Constitution of India, which stipulates that no person shall be deprived of his property save by authority of law. However, in the present case, not only the District Magistrate, Patna-cum-Second Appellate Authority has acted beyond the authority and jurisdiction vested in him under the provisions of the Act, 2015 but has also not bothered to adhere to the principles of natural justice by at least issuing notice to the petitioner, ensuring his appearance and granting him an opportunity of hearing, before passing the impugned orders dated 10.11.2023 and 23.12.2023. Thus, the conduct of the District Magistrate, Patna-cum-Second Appellate Authority, in passing the aforesaid impugned orders dated 10.11.2023 and 23.12.2023 is deprecated.

8. Having regard to the facts and circumstances of the case and for the foregoing reasons, this



Court finds that the impugned orders dated 10.11.2023 and 23.12.2023, passed by the District Magistrate, Patna-cum-Second Appellate Authority in Second Appeal No. 428118028092203512/2A, are illegal, perverse, *mala fide* and *de hors* the provision of law, hence are quashed. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.08.2024
Transmission Date	N/A

