

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.883 of 2024

1. Sukesh Ranjan S/o Bipin Bihari Srivastav, R/o Vill and P.O. - Panch Devari, P.S. - Kateya, Dist. - Gopalganj.
2. Ritesh Kumar Srivastav @ Piku Srivastav, S/o Late Yogendra Prasad Shrivastav, R/o Vill and P.O. - Panch Devari, P.S. - Kateya, Dist. - Gopalganj.
3. Sanjeev Ranjan @ Sanju Srivastav, S/o Late Surendra Prasad, R/o Vill and P.O. - Panch Devari, P.S. - Kateya, Dist. - Gopalganj. At present- Ward No. - 11, Baghi, District - Begusarai (Bihar).
4. Chhotan Prasad Srivastav, S/o Late Gaya Lal @ Late Gaya Prasad Srivastav, R/o Vill and P.O. - Panch Devari, P.S. - Kateya, Dist. - Gopalganj. At Present- Near Alpana Cinema, Digha Ghat, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Dept. of Revenue and Land Reform.
2. The DM, Gopalganj.
3. The DCLR Sub Division Hathua Dist - Gopalganj.
4. The CO Panchdewari, Dist - Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shambhu Sharan Singh, Advocate Mr. Shyamal Krishna Sinha, Advocate Mr. Utkarsh Bhushan, Advocate Mr. Pallava Vijeta, Advocate Mr. N. Ranjan, Advocate
For the State	:	Mr. Prateek Kumar Sinha, AC to GA-5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Dated:- 21-10-2024

The present writ petition has been filed for quashing the notice issued by the Circle Officer, Panchdewri, District- Gopalganj, i.e. the respondent no.4, under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter



referred to as the 'Act, 1956'), in connection with Encroachment Case No.8 of 2023-24.

2. The learned counsel for the petitioners has, at the outset, referred to the entries made in the Revisional Survey Khatiyan, pertaining to the ancestors of the petitioners with regard to Khata No.210, Khesra No.744, situated at Village- Panchdewri, Thana No.512, Circle- Panchdewri, District- Gopalganj. It is submitted that admittedly, the petitioners and their ancestors have been in possession of the land in question since more than 100 years, hence in case the respondent-State seeks to displace them, they can do so only by resorting to suit proceedings. Reference in this connection has been made to a judgment rendered by a co-ordinate Bench of this Court in the case of *Nagendra Mistry vs. State of Bihar & Ors.*, reported in **2000 (1) PLJR 209**, as also the one rendered by a co-ordinate Bench of this Court in the case of *Md. Jamalluddin & Ors. vs. the State of Bihar & Ors.* reported in **2010 (2) PLJR 518**. Nonetheless, it is submitted by the learned counsel for the petitioners that the petitioners have already filed a title suit bearing Title Suit No.06 of 2024, which is pending adjudication before the learned Court of Munsif, Gopalganj. Hence, it is submitted that the respondent-



State be directed to refrain itself from disturbing the possession of the petitioners over the land in question, till disposal of the said title suit in view of the fact that the respondent-State has not denied the fact that the petitioners/their ancestors have been coming in peaceful possession of the land in question and the name of the ancestors of the petitioners have been recorded in the Revisional Survey of the year 1917, as against the entry of the description of the land in question made in the Revisional Survey Khatian.

3. *Per contra*, though the learned counsel for the respondent-State has submitted that the respondent no.4 had initiated encroachment proceedings, vide Encroachment Case No.8 of 2023-24, whereafter the final order under Section 6(1) of the Act, 1956, was passed and then the impugned notice dated 02.01.2024 has been issued, under Section 6(2) of the Act, 1956, directing the petitioners to remove the encroachment in question, resultantly there is no illegality in the procedure followed by the respondent-State, nonetheless, it has not been denied by the respondent-State, as is apparent from paragraph no.7 of the counter affidavit, filed in the present case, that admittedly, the aforesaid land in question is



recorded in R.S. Khatiyani as 'Gair Mazara Malik, Kism Khariyani' and in the column of possession, the names of the ancestors of the petitioners have been mentioned. At this juncture, the learned counsel for the respondent-State submits that since the petitioners have already filed a title suit, they can seek injunction in the said pending suit.

4. I have heard the learned counsels for the parties and perused the materials on record from which it is clear that the land in question is recorded in the R.S. Khatiyani as "Gair Mazara Malik" and against the plot number mentioned therein the names of the ancestors of the petitioners find place, hence they cannot be *prima facie* said to be encroachers within the meaning of the Act, 1956. This Court is of the view that khatiyani/record of rights/revisonal survey, etc. are important documents, required to settle the land related issues, but the same cannot be documents of title, however, such documents may be good document of possession, thus no one can claim any property only on the basis of entry in the khatiyani/record of rights/revisonal survey, etc. because the same neither creates nor extinguishes any right, but is only a reliable piece of evidence and not conclusive evidence. In fact, when record of rights is prepared on the basis of



possession, it remains as a piece of evidence with a presumption of correctness attached to it which may be a good evidence of present possession and not that of tile, thus, the presumption of possession/ownership, on the basis of the names of the ancestors of the petitioners being mentioned against the entry of the aforesaid plot in question in the R.S. Khatiyan, is required to be rebutted by the respondent-State by way of placing better evidence in their favour, thus, the respondent-State would be well advised to contest the aforesaid suit, filed by the petitioners, before the learned Trial Court.

5. Having regard to the facts and circumstances of the case and for the foregoing reasons, this Court deems it fit and proper to grant liberty to the respondent-State to appear and contest the aforesaid title suit bearing Title Suit No.6 of 2024, filed by the petitioners, before the learned Court of Munsif, Gopalganj and pray for expeditious disposal of the same, however, till then, no coercive action shall be taken against the petitioners.

6. It is needless to state that any observation made in the present order shall not be construed to be an observation made in favour of the petitioners and the



aforesaid suit shall be decided on its own merits, on the basis of the evidences to be led by the respective parties.

7. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2024
Transmission Date	NA

