

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4713 of 2018

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Srikant Mishra, Son of Late Rajdeo Mishra, Resident of Village - Mahnakulli,
P.S. - Chanpatiya, District - West Champaran at Bettiah (Bihar).

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, West Champaran at Bettiah.
3. The Sub Divisional Officer, West Champaran at Bettiah.
4. The Deputy Collector Land Reforms, Bettiah, West Champaran.
5. The Circle Officer, Chanpatiya, West Champaran at Bettiah.
6. The Executive Engineer, Road Construction Department, Bettiah, West Champaran.
7. Barrister Pandey, Son of Late Ashesar Pandey
8. Daroga Pandey, Son of Late Dhanai Pandey
9. Dilip Pandey, Son of Daroga Pandey
10. Akhilesh Pandey, Son of Daroga Pandey
11. Shakti Pandey, Son of Late Bijili Pandey
12. Jai Prakash Pandey, Son of Late Bijili Pandey
13. Nanhe Pandey, Son of Late Bijili Pandey
14. Santosh Pandey, Son of Late Bijili Pandey
15. Rupesh Kumar Pandey, Son of Shakti Nath Pandey, Sl. No. 7 to 15 are residents of Village - Mahnakulli, P.S. - Chanpatiya, District - West Champaran at Bettiah (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidyanath Thakur, Advocate
For the Respondent/s : Mr. Dhurjati Kumar Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 25-07-2024 Heard Mr. Baidyanath Thakur, learned Advocate for

the petitioner and Mr. Dhurjati Kumar Prasad, learned

Government Pleader No.14 for the State.

2. The petitioner by invoking the jurisdiction of this

Court seeking a direction upon the respondents, particularly



respondent no. 5 to take appropriate steps to implement its own order/decision dated 06.12.2012, passed in Encroachment Case No. 03 of 2009-10.

3. Learned Advocate for the petitioner contended that for removal of the encroachment over the land in question the petitioner had preferred Encroachment Case No. 03 of 2009-10. Despite the pendency of the Encroachment Case when no action was taken, the petitioner filed CWJC No. 19962 of 2011, seeking a direction upon the respondent authorities to dispose of the Encroachment case.

4. The aforesaid writ petition came to be disposed of vide order dated 05.06.2012, the copy of which is marked as Annexure 13. The aforesaid writ petition came to be disposed of with a direction to the Circle Officer to dispose of the Land Encroachment Case within a period of four months.

5. Against the order; aforementioned, the private respondent preferred Letters Patent Appeal No. 453 of 2012. The Letters Patent Appeal came to be dismissed vide order dated 03.04.2012. The private respondents thereafter filed CWJC No. 9907 of 2012 wherein this Court vide order 05.06.2012 directed as follows:-

“Having heard counsel for the petitioners and the State, I direct the



Circle Officer, Chanpatia to again visit the spot in question on 11.06.2012 along with Amin and other revenue authorities when the petitioner along with his Amin shall also be present for re-measurement of the lands and the house of the petitioner and the extent of encroachment be indicated to the petitioner so that petitioner may remove the encroachment in presence of the Circle Officer. It may be indicated here that the date for re-measurement and removal of the encroachment has been fixed as desired by the petitioner. In case, there is non-cooperation by the petitioner it shall be open for the authorities of the State to file petition for recall of this order.

Application stands disposed of.”

6. In compliance with the direction of this Court, the Circle Officer demarcated the land and found encroachment over the land in question and in this way the land Encroachment Case No. 03 of 2009-10 disposed of vide order dated 06.12.2012.

7. Adverting to the aforesaid facts, Mr. Thakur, learned Advocate for the petitioner, drew the attention of this Court to Section 7 of the Bihar Public Land Encroachment Act, 1956 and vigorously submitted that despite the order of the



Circle Officer, finding encroachment over the land in question, no action has been taken to remove the encroachment in terms of Section 7 of the Bihar Public Land Encroachment Act, 1956 and, as such, he abdicated his statutory responsibility as provided under the Act, 1956.

8. The petitioner, thus filed a contempt petition bearing MJC No. 2552 of 2012, which was also disposed of with a liberty to the petitioner to file an appropriate application before the Circle Officer, to take appropriate steps in terms of own decision, as well as finding arrived at in view of subsequent order dated 05.06.2012, passed in CWJC No. 9907 of 2012. Despite the application/representation filed in pursuant to the order passed by the contempt matter, the encroachment has not been removed till date, is the contention of the petitioner.

9. At this juncture, learned Advocate for the State submitted that the liberty has been given to the petitioner to approach before the concerned Circle Officer way back in the year 2013 itself and now the petitioner has approached this Court after a delay of five years in 2018.

10. The reliance has also been placed over a judgment rendered by the Apex Court in the case of ***Delhi Administration & Ors. vs. Kaushilya Thakur & Anr.*** wherein the Hon'ble



Court has observed that in exercise of power under Article 226 of the Constitution of India, the High Court must not entertain belated claims, unless the petitioner offers tangible explanation.

11. Having heard the rival contentions, *prima facie* the averments made in the writ petition clearly suggest that the Circle Officer found encroachment over the land, however no action has been taken for removal of the same, in terms of Section 7 of the Bihar Public Land Encroachment Act, 1956, thus compelled the petitioner to again approach before this Court by filing the present writ petition.

12. We find substance in the submission of the petitioner. Continuation of encroachment or non-removal of the encroachment certainly gives cause of action to the petitioner to approach this Court, as it could be a recurrent or continuing wrong. The Circle Officer was under the statutory obligation to ensure the removal of the encroachment once, it finds that there is encroachment over the land in question after giving proper notice to the encroachers in terms of Section 7 of the Bihar Public Land Encroachment Act, 1956. However, considering the fact that the order was passed way back in the year 2012, in such circumstances this Court deems it proper to make a fresh spot verification at the level of the Circle Officer after giving proper



notice to all the stake holders and take appropriate action in the light of the earlier order of this Court, as well as in terms of the order dated 06.12.2012, passed in Encroachment Case no. 03 of 2009-10, if the order is not modified/set aside till date and/or the encroachment still exist.

13. The writ petition stands allowed.

(Harish Kumar, J)

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