

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6194 of 2024

=====

Satish Kumar son of Late Sachind Prasad, Resident of Neem Ghat,
Khajekalan, Patna City, P.S.-Khajekalan, P.O.-Jhauganj, District-Patna, Bihar,
Pin-800008.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar
2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Magistrate, Saran.
5. The Circle Officer, Patna, District-Patna.
6. The Circle Officer, Sonepur, District-Saran at Chapra.
7. The SDO, Patna City, District-Patna.
8. DCLR, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Ojha, Advocate
For the Respondent/s : Mr. Standing Counsel-18

=====

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 29-10-2024

Heard learned counsel for the petitioner and learned AC to
SC-18.

2. Learned counsel appearing on behalf of the petitioner
submits that petitioner's father purchased land vide registered sale
deed no. 3003 dated 22.05.1962 (Annexure-1) pertaining to Tauji No.
3069, Jamabandi No. 220 and Khesra No. 6665 and Khesra No. 666.
It is submitted that the khata number of the land was not recorded in
the sale deed as the land was unsurveyed, but then boundary of the
purchased land is recorded in the sale deed which is as follows:



North Diyara Ganja, South Ramchandra Prasad, East Dwarika and West Baba Puran.

3. Mr. Ajit Kumar Ojha, learned counsel for the petitioner submits that a land can well be identified by its boundary. Learned counsel further submits that petitioner was enjoying peaceful possession over the land in dispute for the last more than 60 years when all of a sudden a notice dated 28.01.2022 (Annexure-2) was pasted on 18.02.2022 on a different premise about 600 metres away from the land of the petitioner. It is next submitted that the said notice dated 28.01.2022 pertained to Encroachment Case No. 58/2021-22 whereby petitioner was asked to appear on 21.02.2022 with relevant documents. It is submitted that the petitioner appeared and thereafter again a notice dated 20.04.2022 (Annexure-3) was issued recording that petitioner has encroached the land in question thus was asked to appear on 05.05.2022 with his stand. It is further submitted that thereafter on 20.04.2022 (Annexure-4) a correction letter (Shudhdhi Patra) was issued by the Circle Officer recording therein that in the notice dated 28.01.2022, the encroached land was recorded as pertaining to Mauza Sabalpur, Thana No. 110 but on inquiry, it transpired that the encroached land pertained to Mauza Sabalpur, Thana No. 169 and 170. It is next submitted that petitioner appeared in pursuance of the notice dated 20.04.2022 (Annexure-3)



but he was assured that no action would be taken if he was sure that the land pertains to Mauza Sabalpur, Thana No. 110.

4. Learned counsel for the petitioner submits that petitioner was pacified when the said oral assurance was given by the Circle Officer when he appeared in pursuance of Annexure-3 but all of a sudden on 05.05.2022 (Annexure-5) another notice was issued directing the petitioner to either vacate the land or he will be evicted by force.

5. Learned counsel submits that the land in question was purchased by the father of the petitioner and they are on the land for the last more than 50-60 years though the land is unsurveyed but then the sale deed records the boundary of the land by which the land can be identified as to whether it pertains to Thana No. 110 or Thana No. 169 and 170 pertaining to Mauza Sabalpur.

6. Learned counsel further submits that the first notice dated 28.01.2022 pertained to land pertaining to Mauza Sabalpur, Thana No. 110, thereafter the same was corrected by correction letter dated 20.04.2022 recording therein that the encroached land pertains to Mauza Sabalpur, Thana No. 169 and 170 which amply demonstrates that the authorities themselves are not sure whether petitioner is in possession over the land pertaining to Thana No. 110 or Thana No. 169 and 170.



7. Learned counsel next submits that since the land is unsurveyed as such the authorities without holding any inquiry cannot come to a considered conclusion that the land in dispute is a government land. Learned counsel fairly submits that till date the petitioner is in possession of the land and has not been evicted by the respondent-authorities.

8. Learned counsel appearing on behalf of the State submits that the basic principles for issuing a writ of mandamus is demand and refusal. It is submitted that though petitioner has prayed in the instant writ petition for a direction upon the authorities to demarcate the land and to verify the documents relating to the land and if the same is found in order then not to disturb his possession, thereafter draws the attention of the Court to para 16 of the writ petition to submit that it has been pleaded that petitioner of C.W.J.C. No. 8404 of 2022 had filed a detailed representation before the concerned authorities but to no avail. It is submitted that petitioner on the premise that had he also filed a representation before the authorities for the relief claimed in the instant writ petition, the same would not have been acted upon, thus, straightway filed the instant writ petition.

9. Learned counsel appearing on behalf of the State further submits that from perusal of Annexure-5 to the writ petition, it would manifest that the writ petition is misconceived for the reason that the



Circle Officer, Patna Sadar has already passed an order of eviction dated 05.05.2022 in Encroachment Case No. 58 of 2021-22 with regard to land pertaining to Mauza Sabalpur, Thana No. 169 and 170 on which learned counsel appearing on behalf of the petitioner submits that initially when the notice was issued on 28.01.2022 the same was with respect to Mauza Sabalpur, Thana No. 110 i.e. the land which the father of the petitioner had purchased and the order dated 05.05.2022 in Encroachment Case No. 58 of 2021-22 has been issued by the Circle Officer, Patna with respect to Mauza Sabalpur pertaining to Thana No. 169 and 170.

10. Learned counsel appearing on behalf of the State submits that if the petitioner is not residing on land pertaining to Mauza Sabalpur, Thana No. 169 and 170, in that event, the question of eviction does not arise but if the petitioner is aggrieved by the said order dated 05.05.2022 then he has remedy of appeal under Section 11 of the Bihar Public Land Encroachment Act to move in appeal before the Collector.

11. At this stage, learned counsel appearing on behalf of the petitioner submits that the authorities themselves are confused with regard to the issue of encroachment i.e. whether encroachment pertains to land pertaining to Mauza Sabalpur, Thana No. 110 or land pertaining to Mauza Sabalpur, Thana No. 169 and 170. It is submitted that the Circle Officer in garb of the order dated



05.05.2022 in Encroachment Case No. 58 of 2021-22 may evict the petitioner from the land, as such, seeks permission to withdraw the writ petition with liberty to move in appeal before the Collector, Patna against the order dated 05.05.2022 in Encroachment Case No. 58 of 2021-22.

12. Permission is accorded.

13. Accordingly, the instant writ petition is dismissed as withdrawn.

14. It is made clear that if petitioner files any appeal before the Collector, Patna on or before 18.11.2024, the Collector, Patna while considering the issue of limitation shall also keep in mind that the petitioner was seeking his remedy before this Court.

15. The Court expects that the authorities shall not disturb the possession of the petitioner till 18.11.2024.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	29.10.2024
Transmission Date	

