

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7595 of 2014

Sappu Kumar Mishra son of Brij Kishore Mishra Resident of Village - Mahinava, P.S. - Maner, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate/Collector, Patna.
3. The Sub Divisional Magistrate, Danapur, Patna.
4. The Circle Officer, Maner, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Awadhesh Kumar Pandit, Adv.
For the Respondent/s : Mr. Yogendra Pd. Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 04-10-2024

The present writ petition has been filed for directing the Respondents to reconstruct the boundary wall and structure, existing over the land of the petitioner, situated at Mauza- Mahinava, Maner, appertaining to Khata No. 418, part of Khesra No. 723, which have been illegally demolished by the Circle Officer, Maner, Patna, i.e the respondent No. 4, on 29.05.2013.

2. The brief facts of the case, according to the petitioner, are that the aforesaid land in question was the raiyati land of ex-landlord, which was partitioned in two separate parts and out of the same, 22 decimal of land was allocated for being used as Kabristan and rest 8 decimal of land had remained in Bakast as



Sahang of Plot No. 722 and out of the said 8 decimal land, 4 decimal land along with other portion of the land appertaining to Plot no. 722, was purchased by the father of the petitioner from the legal heir of ex-landlord, namely, Akila Khatoon, in the year, 1973, whereafter construction was made over the said land and since then, the petitioner has been in peaceful possession of the same. It is further stated that in the year, 1984, one Syed Hedayat Ahamd of village Mahinava, Maner, had given an application for measurement of the land of Kabristan, situated over Plot No. 723, leading to initiation of Encroachment Case No. 6 of 84-85 against the father of the petitioner and one Sri Mahabir Mahto, wherein the Anchal Amin had submitted a final report dated 29.08.1985, stating therein that 4 decimal land of part of Plot No. 723 and part of Plot No. 722 had been purchased by the father of the petitioner and he was coming in peaceful possession of the same since a long time.

3. The learned counsel for the petitioner has further submitted that suddenly in the year, 2009-10, some persons had tried to create hindrance with regard to the peaceful possession of the petitioner over the land in question, leading to initiation of Case No. 1 of 09-10 and ultimately, the said case was disposed off by the Circle Officer, Maner, Patna, by an order dt.



09.02.2012, observing therein that the petitioner can construct boundary wall over the land in question. Nonetheless, again a complaint was lodged by Syed Hedayat Ahmad on 16.02.2013 to the effect that police force is required for construction of boundary wall of the Kabristan, whereafter the Circle Officer, Maner, all of a sudden, came with police force to the house of the petitioner on 29.05.2013 and demolished the boundary wall as also the cattle shed constructed by the petitioner, without assigning any reason and without notice to the petitioner, leading to the petitioner filing a representation before the Sub-Divisional Officer, Danapur, however, to no avail. Thus, it is submitted by the learned counsel for the petitioner that the Respondents be precluded from creating interference in the peaceful possession of the petitioner over the aforesaid land in question.

4. *Per contra*, the learned counsel for the Respondent-State has submitted that the aforesaid land, appertaining to Khata No. 418, Plot No. 723, Area 30 decimal, situated at Mauza Mahinawa, P.S. Maner, Thana No. 31, District-Patna, is mentioned in the record of rights (khatian)/CS Khatian, as Gair Majarua Aam Kabristan Land, thus the said land can neither be settled in favor of anyone nor can be sold, thus



admittedly, the petitioner cannot have any ownership rights over the same, hence, any construction made by the petitioner over the said land is an encroachment of the Government's land. In fact, the Deputy Collector, Land Reforms, Danapur, has also found that the entire 30 decimal land, appertaining to Plot No. 723, is a Gair Majarua Aam Kabristan land and has passed an order dated 26.5.2010, in Land Dispute Redressal Case No. 1 of 2009-10, in which the petitioner is also a party, holding that the entire 30 decimal land, appertaining to Plot No. 723, is a Kabristan land, on which neither the petitioner nor Mahabir Mahto have got any ownership rights, hence, has directed the Circle Officer, Maner, to initiate encroachment proceedings and get the encroachment removed from the said land in question. Thus, it is submitted that construction of boundary wall by the petitioner over a part of the land appertaining to Khata No. 418, Plot No. 723, is illegal.

5. It is further submitted by the learned counsel for the Respondent-State, by referring to the sale deed, annexed as Annexure-D to the counter affidavit filed in the present case that Plot No. 722 was purchased by one Satya Deo Mishra, ancestor of the petitioner, in the year, 1973 and the same was sold by the father of the petitioner, namely Braj Kishore Mishra, on



10.5.1996 to Vijay Kumar Yadav, however, no sale deed has been produced by the petitioner with regard to acquisition of Plot No. 723. It is also submitted by the learned counsel for the Respondent-State that as far as Encroachment Case No. 6 of 84-85 is concerned, the petitioner has not brought on record any order, passed by the Circle Officer, Maner, Patna, to show that the said encroachment proceedings had been dropped.

6. It is further submitted by the learned counsel for the Respondent-State that the total area of land, appertaining to Khata No. 418, Plot No. 723, situated at Mauza-Mahinawa, Thana No. 31, Circle-Maner, District-Patna, is 30 decimal and the same is Gair Majarua Aam Kabristan land, hence, while the fencing of the said Kabristan was being conducted under the Government Scheme, in presence of the officials of the District Administration, it was found that the petitioner had made temporary encroachment over 4 decimal of land of Kabristan by making a boundary wall, which was removed by the Circle Officer, Maner and the fencing of the Kabristan was completed, hence, there is no illegality in demolition of the boundary wall of the petitioner, which admittedly was an encroachment upon the aforesaid land in question.

7. Lastly, it is submitted by the learned counsel for the



Respondent-State that the Collector, Patna, has made an enquiry and it has been found that encroachment has also been made by one Mahabir Mahto, over the land in question, hence, directions have been given to the Circle Officer, Maner, to initiate encroachment proceedings, whereafter Encroachment Case No. 1 of 2024-25 has been initiated.

8. I have heard the learned counsel for the parties and perused the materials on record from which this court finds that neither any Basgit parcha nor any jamabandi nor any sale deed nor any other document has been produced by the petitioner in proof of his right, title and interest over the land, appertaining to Khata No 418, Khesra No. 723, situated at Mauza-Mahinava, Thana No. 31, Circle Maner, District-Patna and merely reliance has been placed on a report of the Anchal Amin, furnished in connection with Encroachment Case No. 6 of 1984-85, however, the petitioner has failed to produce any order passed by the Circle Officer, Maner, in the said encroachment proceeding, dropping the same qua the petitioner herein.

9. As regards reference made by the petitioner to the order dt. 09.02.2012, passed by the Circle Officer, Maner, Patna, in connection with Case No. 1 of 2009-10, it would suffice to state that the Circle Officer, Maner, Patna, has only made a passing



observation therein with regard to construction of boundary wall by the petitioner, however, the fact remains that the said case, i.e. Case No. 1 of 09-10, appears to have been initiated under Section 13 of the Bihar Land Disputes Redressal Rules, 2010 and an obnoxious/illegal order has been passed by the Circle Officer, Maner, on 9.2.2012, permitting the petitioner to construct a boundary wall over the land in question, which appears to be beyond jurisdiction and contrary to the order dt. 26.5.2010, passed by the Deputy Collector, Land Reforms, Danapur, in Land Dispute Redressal Case No. 1 of 09-10, holding the petitioner to be not having any ownership rights, hence the encroachment made is liable to be removed.

10. It is a well settled law that there is no estoppel against law and the State is not bound by the acts of its officers, if the same has been done by them outside their authority or power of the public authority to make it. It is equally a well settled law that any action done unauthorizedly and without jurisdiction does not bind the State Government. Reference be had to a recent judgment dated 10.05.2024, rendered by the learned Division Bench of this Court, in the case of ***S. M. Ehteshamul Hasan Rehmani vs. the State of Bihar & Ors.*** (LPA No. 1106 of 2023 and analogous case).



11. This Court further finds that the Deputy Collector, Land Reforms, Danapur, has passed an order against the petitioner in a case bearing Land Dispute Redressal Case No. 1 of 2009-10 and it has been held therein that 30 decimal land, appertaining to Plot No. 723, is Gair Majarua Aam Kabristan land and the petitioner as also one Mahabir Mahto are not having any ownership rights over the said land in question, hence, he has directed the Circle Officer, Maner, to initiate encroachment proceedings and ensure removal of encroachment made over the said 30 decimal land, appertaining to Plot No. 723, Khata No. 418, thus, this Court finds that the petitioner has not been able to make out any case for interference so as to warrant issuance of direction for reconstruction of the boundary wall in question and payment of compensation to the petitioner, hence the present writ petition is devoid of any merit.

12. Having regard to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the present case, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	19.9.2024
Uploading Date	04.10.2024
Transmission Date	NA

