

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10081 of 2024

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Baba Kinaram Ashram represented through its Manager, namely, Baba Bhola Ram Jee @ Lal Bahadur Yadav, aged about 44. Years, male, son of Subhash Yadav, Residence of Baba Kinaram Ashram, Village - Bajarkona, PO and PS - Kudra, District - Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Dept. of Revenue and Land Reforms, Govt of Bihar, Patna.
3. The Collector, Kaimur at Bhabua.
4. The Deputy Collector Land Reforms (DCLR), Kaimur at Bhabua.
5. The Circle Officer, Kudra, Kaimur at Bhabua.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Arun Kumar Tiwari, Adv.

For the Respondent/s : Mr. Sushil Kumar, GP-22

Mr. Narendra Kumar Singh, AC to GP-22

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 04-10-2024

The present writ petition has been filed for restraining the Circle Officer, Kudra, Kaimur at Bhabhua, i.e. the Respondent No. 5, from demolishing the pukka structure constructed over Plot No. 252, Khata No. 68, Thana No. 654, situated at Mauza Bajarkona, P.S. Kudra, District-Kaimur at Bhabhua, in pursuance to the encroachment notice issued to the petitioner by



the Respondent No. 5 on 18.06.2024.

2. The brief facts of the case, according to the petitioner, are that the aforesaid land in question was settled in favor of the petitioner by the ex-intermediary, namely, Babu Ram Nandan Singh, vide a patta dated Falgun 15, 1351, equivalent to the year, 1944 of the English calendar and the land in question being barren, one of the saint of Baba Kinaram Ashram had settled there by chance, resulting in the said land being given in the name of Baba Kinaram Ashram, as aforesaid. A notice dated 28.7.2023 was issued by the Respondent No. 5, in connection with Encroachment Case No. 4 of 2023-24, however, the petitioner had requested for some time for producing documents pertaining to the land in question. Nonetheless, yet another notice dated 4.11.2023 was issued by the Respondent No. 5 to remove the encroachment in question, whereupon the petitioner had requested the Consolidation Officer for supply of documents, pertaining to Plot No. 252, but no documents were furnished on account of the same being torn. The learned Counsel for the petitioner has though referred to the certified copy of the khatiyani, however, this Court finds that the name of the petitioner does not find place therein.

3. The learned counsel for the petitioner has submitted that



since a tense situation was created by the Respondent No. 5, the petitioner filed a suit before the learned Court of Sub-Judge, Mohania, Kaimur at Bhabhua, bearing Title Suit No. 452 of 2024, wherein notices have been issued to the Respondents, hence the Respondents should be directed to appear and contest the same, thus the encroachment proceedings should be quashed. The learned counsel for the petitioner has also referred to a judgment, rendered by a coordinate Bench of this Court (Ranchi Bench), reported in 1992 (1) PLJR 165 (***Ganesh Chandra Jha vs. Steel Authority of India & Others***), to submit that it has been held in the said judgment that since the facts and figures given in the writ application have not been controverted in the counter affidavit, thus, the statements made in the petition must be accepted. Hence, it is submitted that since the Respondents have not controverted the statements made in the writ application categorically, the same should be accepted.

4. *Per contra*, the learned counsel appearing for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that the Deputy Collector, Land Reforms, Mohania, Kaimur at Bhabhua, has made a detailed enquiry into the matter and it has been found that for the purposes of construction of Panchayat Sarkar Bhawan at



Gram Panchayat-Newarash, a proposal was mooted for construction of the same over the land situated at Mauza Bajrakona, Thana No. 654, appertaining to Khata No. 68, Plot No. 252, admeasuring .50 acres out of total land of 1.48 acres. The Halka Karamchari and Anchal Amin had submitted their joint report / measurement report to the Respondent No. 5, stating therein that two persons, namely, Vidya Devi and the petitioner herein have encroached the said land in question, whereafter encroachment proceedings, vide Encroachment Case No. 4 of 2023-24, were initiated and a notice under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the “Act, 1956”), was sent to both the aforesaid encroachers, however, they failed to submit any document to show their right, title and interest over the aforesaid land in question, hence, the Respondent No. 5, by an order dated 29.8.2023/4.11.2023, declared the aforesaid land in question to be a public land by passing the final order under Section 6(1) of the Act, 1956, whereafter notices, under Section 6(2) of the Act, 1956, were issued to the encroachers, directing them to remove the encroachments made by them over the aforesaid land in question. The learned counsel for the Respondent-State submits that in case, the petitioner is aggrieved by the final order, passed



by the Circle Officer, Kudra, on 29.8.2023/4.11.2023, he can prefer an appeal under Section 11 of the Act, 1956.

5. At this juncture, this Court had asked the learned counsel appearing for the petitioner as to whether he wants to prefer an appeal, challenging the aforesaid order dated 29.8.2023/4.11.2023, passed by the Circle Officer, Kudra, to which the Ld. counsel for the petitioner has submitted that since the petitioner has already filed a title suit, he does not intend to file any appeal, hence, the present case be decided on its own merits.

6. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that the petitioner has failed to satisfy this Court with regard to the right, title and interest of the petitioner in the aforesaid land in question, inasmuch as no cogent proof much less any admissible documents have been produced by the petitioner with regard to the same, whereas the Respondent-State has categorically stated that the aforesaid land in question is Anabad Bihar Sarkar Land and the same was found to have been encroached by the petitioner and one another person, hence, encroachment proceedings were initiated, vide Encroachment Case No. 4 of 2023-24, whereafter notices were issued to the petitioner, but the petitioner admittedly failed to produce even a single chit of



paper to show its right, title and interest over the land in question, leading to the Circle Officer, Kudra, passing the final order under Section 6(1) of the Act, 1956, on 29.8.2023/4.11.2023, holding the petitioner and one another person to be encroachers, which has remained unassailed, inasmuch as the petitioner has not challenged the same in the present proceedings, consequently, the petitioner has no right to maintain the present writ petition under Article 226 of the Constitution of India. Even otherwise, the petitioner has already availed an alternative remedy, by way of filing the aforesaid title suit, which according to him is more efficacious, hence, the petitioner is precluded from pursuing two remedies for one cause of action, more so in view of the fact that the learned counsel for the petitioner has categorically submitted that the petitioner does not intend to file any appeal against the final order dated 29.8.2023/4.11.2023, passed by the Respondent No. 5, since he is already pursuing the title suit filed by him.

7. As regards the contention of the petitioner to the effect that since the Respondents have not controverted the statements made in the writ petition, the same must be accepted, though this Court is not required to advert to each and every fallacious submissions, but it would suffice to state that the entire writ



petition is sans any proof regarding right, title and interest of the petitioner in the aforesaid land in question, inasmuch as no evidence in proof of the same has been annexed to the writ petition, hence, there is absolutely nothing, which is required to be controverted by the Respondents. It is a settled principle of law that pleadings are not evidence and that a party who wants to prove anything, as set out in his/her pleadings, has to give evidence to prove his/her assertions. (Reference be made to Sections 101 to 104 of the Indian Evidence Act, 1872, corresponding to Sections 104 to 107 of the Bharatiya Sakshya Adhiniyam, 2023). In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Bharat Singh v. State of Haryana***, reported in ***(1988) 4 SCC 534***, paragraph No. 13 whereof is reproduced herein below:-

“13.In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be



out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

8. Inexorably, this Court finds that the petitioner has already filed a title suit bearing Title Suit No. 452 of 2024, which is pending consideration before the learned Court of Sub-Judge, Mohania, Kaimur at Bhabhua and no order of injunction has been passed in favor of the petitioner, apart from the fact that the learned counsel for the petitioner has categorically stated during the course of arguments that the petitioner does not intend to challenge the final order, passed by the Respondent No. 5, in Encroachment Case No. 4 of 2023-24, inasmuch as he intends to pursue the aforesaid title suit, hence this Court is of the view that nothing survives for consideration/adjudication in the present writ petition, especially in view of the fact that the



records depict that the petitioner has admittedly encroached the Anabad Bihar Sarkar Land.

9. Having regard to the facts and circumstances of the case and considering the materials on record, this Court finds that the petitioner has not made out any case for quashing of the notice dated 18.6.2024, issued by the Circle Officer, Kudra, informing the petitioner about the date fixed for removing the encroachment made over the land appertaining to Khata No. 68, Khesra No. 252, situated at Mauza Bajarkona, Thana No. 654, Kudra, District Kaimur at Bhabhua, especially in view of the fact that the final order dated 29.8.2023/4.11.2023, passed by the Circle Officer, Kudra under Section 6(1) of the Act, 1956, in connection with Encroachment Case No. 4 of 2023-24, declaring the petitioner to be an encroacher, has neither been challenged nor the petitioner intends to challenge the same, by filing appropriate appeal, apart from the fact that the petitioner has failed to satisfy this Court with regard to its right, title and interest in the aforesaid land in question, inasmuch as no cogent proof much less any admissible documents have been produced by the petitioner with regard to the same, whereas the Respondent-State has categorically stated that the aforesaid land in question is Anabad Bihar Sarkar Land, which has been found



to have been encroached by the petitioner and one another person, hence, I do not find any merit in the present writ petition, thus the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	25.9.2024
Uploading Date	04.10.2024
Transmission Date	NA

