

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13159 of 2022

Rup Narayan Choudhary S/o Late Dev Krishna Choudhary, Resident of
Village- Dadpatti, P.S.- Sakatpur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department of Revenue and Land Reforms Govt. of Bihar.
2. The Collector-Cum-District Magistrate, Darbhanga.
3. The Additional Collector, Darbhanga.
4. The Deputy Collector Land Reforms, Sadar Darbhanga.
5. The Circle Officer, Tardih, District- Darbhanga.
6. Bhavesh Narayn Choudhary S/o Late Singheshwar Narayan Choudhary, Resident of Dadpatti, P.S.- Sakatpur, Dist.- Darbhanga.
7. Madan Narayan Choudhary S/o Late Veerbhadra Narayan Choudhary, resident of Dadpatti, P.S.-Sakatpur, Dist-Darbhanga.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.
Mr. Kumar Gaurav, Adv.
Mr. Shashank Kashyap, Adv.
For the State : Mr. Navnit Kumar, AC to GP-18

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 19-11-2024

The present writ petition has been filed for quashing the order dated 22.12.2021, passed by the Circle Officer, Tardih, District-Darbhanga, i.e. the Respondent No. 5, in connection with Encroachment Case No. 1 of 2021 as also for quashing the



appellate order dated 26.7.2022, passed by the learned Court of Collector-cum-District Magistrate, Darbhanga, in Encroachment Appeal Case No. 1 of 2022, whereby and whereunder the appeal has been dismissed. The petitioner has also prayed that the respondents be directed to pay compensation for illegally demolishing the boundary wall of the petitioner.

2. The brief facts of the case, according to the petitioner, are that the dispute in question pertains to land of the petitioner, situated at Thana No. 357, old Plots No. 1036 and 1037, corresponding to new Plots No. 1623 and 1624, Khata No. 388, ad-measuring 3 decimals and 5 decimals respectively. It is stated that admittedly, the aforesaid lands have been recorded in the revisional survey khatian as Anabad Sarvsadharan and the nature of the land has been shown as purani parti, however, adjacent to the said plots, the raiyati land of the petitioner, appertaining to Plot No. 1625, is situated, however, the same is being used by the local people as rasta since several years, hence, in lieu thereof, the petitioner was given possession over part of Plot No. 1624. It is stated that one co-villager of the petitioner, namely, Bhavesh Narayan Choudhary, had made a complaint to the Circle Officer, Manigachi, for removal of the alleged encroachment made by the petitioner over Plots No.



1036 and 1037, corresponding to new Plots No. 1623 and 1624, leading to initiation of encroachment proceedings by the Circle Officer, Manigachi, vide Encroachment Case No. 7 of 1996-97, nonetheless, the aforesaid factum of the petitioner having permitted the Respondent State authorities to use his raiyati land, situated over Plot No. 1625 and in lieu thereof, the State authorities having permitted the petitioner to use / occupy Plot No. 1623 and part of Plot No. 1624 was accepted by the Circle Officer, Manigachi, which led to passing of the final order dated 22.01.1997, in connection with Encroachment Case No. 7 of 1996-97, wherein it has been held that the ancestors of the petitioner had been residing by constructing a house over the land in question, appertaining to Plot No. 1623 and part of Plot No. 1624, since about 35 years, hence, legally, they have also perfected their right, title and interest over the said land by way of adverse possession, apart from the fact that the land of the petitioner/his ancestor has been used as rasta, hence, they have been permitted to use Plot No. 1036 and part of Plot No. 1037, corresponding to new Plots No. 1623 and 1624, thus the said encroachment proceeding was dropped by the Respondent No. 5.

3. The learned counsel for the petitioner has further submitted that despite the Circle Officer, Manigachi, having



dropped the encroachment proceeding, initiated vide Encroachment Case No. 7 of 1996-97, by an order dated 22.1.1997, yet again an encroachment proceeding was initiated by the Respondent No. 5 vide Encroachment Case No. 1 of 2021 for removal of encroachment made by the petitioner/his ancestor over the land appertaining to Khata No. 388, Khesra No. 1036 and 1037 (old), corresponding to Khesra No. 1623 and 1624 (new), whereafter he had passed the impugned order dated 22.12.2021 holding the petitioner to be an encroacher and having encroached land appertaining to Plots No. 1623 and 1624. The petitioner had then challenged the said order dated 22.12.2021 by filing an appeal before the Collector, Darbhanga bearing Encroachment Appeal Case No. 1 of 2022, however, the same has also stood dismissed by an order dated 26.7.2022.

4. The learned counsel for the petitioner has raised a legal issue to the effect that since the earlier encroachment proceeding has been dropped by an order dated 22.01.1997, which has attained finality, the matter cannot be reagitated in a fresh proceeding, as such, the same should be quashed. The learned counsel for the petitioner has relied upon a judgment rendered by the Ld. Division Bench of this Court in the case of *Sri Kali Prasad Seal v. State of Bihar*, reported in *1969 BLJR 254*,



wherein it has been held that the Government could not have initiated a second proceeding after dropping the first encroachment proceeding under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act, 1956'). Reference has also been made to a judgment rendered by a coordinate Bench of this Court in the case of *Mahant Ramagya Giri vs. The State of Bihar & Others*, reported in **1991 (2) PLJR 249** as also to a judgment, rendered by a coordinate Bench of this Court in the case of *Tapeshwar Prasad Singh vs. The State of Bihar & Ors.*, reported in **2014 (3) PLJR 798**.

5. The other issue, which has been raised by the petitioner, is that disputed and complicated question of right/ title / possession of immovable property cannot be decided in a summary proceeding and in case the State Government is sanguine about its claim and it is of the view that a genuine dispute exists between the parties on the question of title involving issues of long possession of the petitioner and his predecessor, proper remedy would be institution of a suit for adjudication of dispute regarding ownership right over the land in question and to get the right declared by the competent civil Court. Reference, in this connection, has been made to a



judgment, rendered by the Hon'ble Apex Court in the case of ***Government of Andhra Pradesh vs. Thummala Krishna Rao & Anr.***, reported in **1982 (2) SCC 134**, paragraphs no. 8 and 9 whereof are reproduced herein below:-

“8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is “the property of the Government”. In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land “for which he is liable to pay assessment under Section 3”. Section 3, in turn, refers to unauthorised occupation of any land “which is the property of the Government”. If there is a bona fide dispute regarding the title of the Government to



any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Govt. to evict the Nawab & his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to



unless the alleged encroachment is of “a very recent origin”, cannot be stretched too far. That was also the view taken by the learned Single Judge himself in another case which is reported in Meharunnissa Begum v. State of A.P. [(1970) 1 Andh LT 88] which was affirmed by a Division Bench [Meherunnissa Begum v. Govt. of A.P., AIR 1971 AP 382]. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Govt. cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.”

6. *Per contra*, the learned counsel for the Respondent- State has referred to the counter affidavit filed in the present case and has submitted that the order dated 22.1.1997, passed in Encroachment Case No. 7 of 1996-97, is a matter of record and



the Respondents have no comment to make upon the same. However, it has been further submitted that admittedly, the aforesaid Plots No. 1623 and 1624 are Anabad Sarv sadharan type of land. The learned counsel for the Respondent-State has further referred to the supplementary counter affidavit filed on behalf of the Respondent No. 5 on 14.5.2024, wherein it has been stated that an enquiry committee was set up to enquire into the matter and it has been found that the impugned orders dated 22.12.2021 and 26.7.2022 are just and legal as also there is no procedural error, hence, it is submitted that the present writ petition is fit to be dismissed.

7. At this juncture, though the learned counsel for the Respondent-State has pointed out that the petitioner is trying to block the road which was permitted by the petitioner / his ancestor to be constructed over Plot No. 1625, however, the same is denied by the learned counsel for the petitioner and he submits that the petitioner has got no intention to block any road.

8. I have heard the learned counsel for the parties and perused the materials on record from which it transpires that the earlier encroachment proceeding was initiated by the Circle Officer, Manigachi vide Encroachment Case no. 7 of 1996-97,



pertaining to Khata No. 388, Old Plots No. 1036 and 1037, corresponding to new Plots No. 1623 and 1624, however, being convinced that the petitioner is legally having adverse possession over the same, he had dropped the encroachment proceedings vide order dated 22.1.1997, which has now attained finality. Hence, this Court is of the view that in view of the law laid down by the Ld. Division Bench of this Court in the case of ***Sri Kali Prasad Seal*** (supra) as also by the coordinate Benches of this Court in the case of ***Mahant Ramagya Giri*** (supra) and ***Tapeshwar Prasad Singh*** (supra), the second encroachment proceeding initiated by the Respondent No. 5 vide Encroachment Case No. 1 of 2021 is non-maintainable, thus the proceedings of the aforesaid Encroachment Case No. 1 of 2021 are quashed. Consequently, the appellate order dated 26.7.2022, passed by the learned Court of Collector-cum-District Magistrate, Darbhanga, in Encroachment Appeal Case No. 1 of 2022 has got no legs to stand, hence, is also set aside.

9. Nonetheless, this Court is of the view that disputed question of facts as also complicated issues of right, title and interest are involved in the present case. Hence, considering the law laid down by the Hon'ble Apex Court in the case of ***Thummala Krishna Rao*** (supra) as also the law laid down by



coordinate Benches of this Court in the case of *Nagendra Mistry vs. State of Bihar & Ors.*, reported in (2000) 1 PLJR 209 and in the case of *Md. Jamalluddin & Ors. vs. the State of Bihar & Ors.*, reported in (2010) 2 PLJR 518, this Court grants liberty to the Respondents to approach the Civil Court of competent jurisdiction for declaration of their right, title and interest over the afore-said Plots No. 1623 & 1624, in case they are sanguine about their claim.

10. Consequently, this Court directs that till the time, the right, title and interest of the Respondent-State is declared by the Civil Court of competent jurisdiction with regard to the aforesaid Plots No. 1623 & 1624 or till any adverse order is passed against the petitioner, he shall neither be disturbed of his possession over the said plots nor shall be precluded from making construction/restoring the position as was existing before, however, he shall not create any interference or obstruction in connection with the road situated over Plot No. 1625.

11. At this juncture, the learned counsel for the petitioner seeks liberty on behalf of the petitioner to raise the issue of compensation by approaching the learned Civil Court of competent jurisdiction. Liberty so sought is granted.



12. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.01.2025
Transmission Date	NA

