

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12098 of 2024

=====

Mahabir Mahto alias Mahabir Prasad S/o Bechan Mahto Resident of P.S.-
Maner, District- Patna- 801108.

... .. Petitioner/s

Versus

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

... .. Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Shambhu Sharan Singh, Adv.
For the Respondent/s : Mr. Anwar Karim, AC to GP-10

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 04-10-2024

The present writ petition has been filed for setting aside the notice dated 15.7.2024, issued by the Circle Officer, Maner, i.e. the Respondent No. 4, in connection with Encroachment Case No. 1 of 2024-25, asking the petitioner to appear and show cause as to why the encroachment made over the land, situated at Mauza- Mahinava, Thana No. 31, P.S. Maner, District-Patna, appertaining to Khata No. 418, Khesra No. 723, ad-measuring 3.4 decimal, be not removed. The petitioner has further prayed for directing the Respondent authorities to initiate action against the Circle Officer, Maner, for malafidely and in a frivolous manner initiating the aforesaid encroachment proceedings.

2. The brief facts of the case, according to the petitioner, are



that a land bearing Plot No. 723, Khata No. 418, Mauza Mahinava, Maner, ad-measuring 30 decimal, was the raiyati land of the ex-landlord, which was partitioned in two separate parts, out of which 22 decimal of land was allocated as Kabristan land and the rest i.e 8 decimal Bakast land was in possession of the ex-landlord as Sahan of Plot No. 722. Out of the said 8 decimal land, 4 decimal land was purchased by one Brij Kishore Mishra from the legal heirs of the ex-landlord, namely, Akila Khatoon, in the year, 1973 and then a residential house was constructed. The remaining 4 decimal of Bakast land was handed over to one Subhash Pandit, who started residing over the said land and subsequently Basgit Parcha was handed over to him by the Circle Officer, Maner, who then made a registered gift deed to his wife, namely Shushila Devi, on 04.07.1972. On 20.7.1976, the then Circle Officer, Maner, while considering the report of Halka Karamchari dated 26.6.1976, approved the registration of the said land bearing Plot No. 418, Khesra No. 723, ad-measuring 4 decimal in the name of Subhash Pandit. It is further stated that the wife of Subhash Pandit sold the aforesaid 4 decimal land to Smt. Rajmani Devi, wife of the petitioner, on 26.10.1981, whereafter house was constructed over the said land and since then, the petitioner and



his wife have been living there peacefully.

3. The learned counsel for the petitioner has submitted that in the year, 1984, one Syed Hedayat Ahmad had submitted an application for measurement of the land of Kabristan, situated at Plot No. 723, leading to initiation of Encroachment Case No. 6 of 1984-85 against the petitioner and one Brij Kishore Mishra, wherein the Anchal Amin had submitted a report dated 29.8.1985, after measurement and spot verification, wherein it has been stated that 4 decimal of land of Plot No. 723 was given to Subhash Pandit by the ex-landlord and then Basgit Parcha was handed over to him by the Government, which was then sold to the petitioner and the remaining 4 decimal of land belongs to Brij Kishore Mishra and they have been in peaceful possession of the said plot in question since long.

4. The learned counsel for the petitioner has further submitted that thereafter, Encroachment Case No. 1 of 2009-10, was initiated by the Circle Officer, Maner, however, upon examination of the matter, the Circle Officer, Maner, by an order dated 09.02.2012, had dropped the encroachment proceedings qua the petitioner and one Sappu Kumar Mishra son of Brij Kishore Mishra.

5. Thus, it is the submission of the learned counsel for the



petitioner that since the encroachment proceedings, initiated earlier against the petitioner, vide Encroachment Case No. 6 of 1984-85, has stood dropped, no second encroachment proceeding, in respect of the same land and on the same ground, can be initiated. In this connection, the learned counsel for the petitioner has relied on 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.

6. *Per contra*, the learned counsel for the Respondent-State has submitted that a detailed enquiry was made and it has been found that the land in question pertains to Mauza- Mahinava, Thana No. 31, appertaining to Khata No. 418, Plot No. 723, Circle-Maner and the total area, as per the survey khatian, is 30 decimal and the same is recorded as Gair Majarua Aam land, its nature being “Kabristan”. 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 observed that temporary encroachment has been made by one Sri Sappu Kumar Mishra over 4 decimal of land of the Kabristan, hence the same was removed by the then Circle Officer, Maner and the fencing of the Kabristan was completed, however, the custodian of the said Kabristan, Sri Syed Asif



Ahmad, had made a complaint that the house of the petitioner is existing on 3.4 decimal of the Kabristan land, which is required to be removed, leading to initiation of fresh encroachment proceedings by the Circle Officer, vide Encroachment Case No. 1 of 2024-25. It is submitted that the Revenue Karamchari has also submitted a report dated 07.08.2024, wherein it has been stated that as per the CS Khatiyani, the land appertaining to Khata No. 418, Plot No. 723, situated at Mauza- Mahinava, Thana No. 31, area 30 decimal, is a Gairmajarua Aam Land and the nature of the said land is Kabristan. It is stated that a jamabandi bearing Jamabandi No. 24/5 has been created in the name of Rajmani Devi i.e. the wife of the petitioner, thus recommendation has been made to cancel the same. It is submitted that as far as the impugned notice dated 15.07.2024 is concerned, the same has been issued to the petitioner, asking him to file his show cause in connection with Encroachment Case No. 1 of 2024-25, hence, the present writ petition is premature, inasmuch as no order has been passed against the petitioner till date by the Circle Officer, Maner, Patna.

7. I have heard the learned counsel for the parties and perused the materials on record. This Court finds from a bare perusal of the order-sheet of Encroachment Case No. 6 of 1984-



85, annexed by the petitioner to the present writ petition that though the same was initiated against the petitioner and one another person, namely Brij Kishore Mishra and the same also refers to a report, submitted by the Anchal Amin dated 13.2.1985/ 29.8.1985, however, the entire order-sheet nowhere speaks of the said encroachment proceeding having been dropped. In fact the petitioner has failed to show/produce any order, passed by the Circle Officer, Maner, Patna, in connection with Encroachment Case No. 6 of 1984-85, to show that the encroachment proceedings in question had stood dropped, nonetheless, this Court finds that an order dated 09.02.2012, passed by the Circle Officer, Maner, Patna, in connection with Case No. 1 of 2009-10, has been produced, wherein though the petitioner is not a party but reference has been made regarding his pukka house, however, ultimately, the Circle Officer, Maner, Patna, has only observed therein that Sappu Kumar Mishra son of Brij Kishore Mishra can construct boundary wall over the land in question but no reference has been made regarding the petitioner having not encroached the land of the Kabristan. Thus, the contention of the learned counsel for the petitioner that the Circle Officer, Maner, has not only dropped the proceedings of Encroachment Case No. 6 of 1984-85 but has



also has dropped the proceedings of the Encroachment Case No. 1 of 2009-10 qua the petitioner is fallacious and incorrect, more so in view of the fact that as far as Case No. 1 of 2009-10 is concerned, the same appears to have been initiated under Section 13 of the Bihar Land Disputes Redressal Rules, 2010 and an obnoxious/illegal order dated 09.02.2012 has been passed by the Circle Officer, Maner, beyond Jurisdiction.

8. At this juncture it may be relevant to mention here that at the instance of the Ld. Counsel for the petitioner, this case was directed to be listed along-with one another writ petition bearing CWJC No. 7595 of 2014, which also pertains to the same Plot number, vide order dated 19.08.2024. This Court finds from the records of the said case i.e. CWJC No. 7595 of 2014 that the Deputy Collector, Land Reforms, Danapur, by an order dated 26.5.2010, passed in Land Dispute Redressal Case No. 1 of 2009-10, has held that the entire 30 decimal land, appertaining to Plot No. 723, is a Gair Majarua Aam Kabristan land, hence, the petitioner herein as also one Sappu Kumar Mishra do not have any ownership rights over the same, as such the Circle Officer, Maner, is required to initiate encroachment proceedings and remove the encroachment made over the said land in question. A photocopy of the said order dated 26.5.2010, passed



by the Deputy Collector, Land Reforms, Danapur, in Land Dispute Redressal Case No. 1 of 2009-10 is being kept on record. The said order dated 26.05.2010 has though been suppressed by the petitioner in the present proceedings but the fact remains that the same has stood un-challenged, hence would definitely have a bearing on the present case.

9. Thus, considering the totality of the assertions made in the counter affidavit filed by the respondents, not rebutted by the petitioner as also taking note of the averments put forth by the parties, this Court finds that as per the CS Khatyan, the land appertaining to Khata No. 418, Plot No. 723, situated at Mauza-Mahinava, Thana No. 31, area 30 decimal, is a Gair Majarua Aam Land and the nature of the said land is Kabristan, hence 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. As far as Encroachment Case No. 6 of 1984-85 is concerned, the entire order-sheet thereof, as has been annexed to the writ petition, nowhere speaks of the said encroachment proceeding having been dropped qua the petitioner apart from the fact that the petitioner has failed to show/produce any order, passed by the Circle Officer, Maner, Patna, in connection with the said encroachment case, whereby the encroachment



proceedings have stood dropped qua the petitioner.

10. 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 observed therein that Sappu Kumar Mishra son of Brij Kishore Mishra can construct boundary wall over the land in question but no remark has been made about the petitioner. It may be noted here 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 & an obnoxious/illegal order has been passed by the Circle Officer, Maner, on 9.2.2012, permitting the said Sappu Kumar Mishra to construct boundary wall over the land in question, which appears to be beyond jurisdiction & 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 by initiation of encroachment proceedings.

11. 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).

12. It is equally a well settled law that any entry in revenue records or creation of Jamabandi does not confer title on a person, whose name appears in the record of rights and that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value with regard to title. Even, mutation entry does not confer any right, title or interest in favor of a person and the same is only for fiscal purpose. Reference in this connection be had to the following judgments rendered by the Hon'ble Apex Court:-

(i) ***(2007) 6 SCC 186 (Suraj Bhan & Ors vs. Financial Commissioner & Ors.)***

(ii) ***2021 SCC OnLine SC 802 (Jitendra Singh vs. State of Madhya Pradesh & Ors.)***, and

(iii) ***2023 SCC OnLine SC 1483 (P. Kishore Kumar vs. Vittal K. Patkar)***

13. Lastly, this Court finds that the Deputy Collector, Land Reforms, Danapur, by an order dated 26.5.2010, passed in Land



Dispute Redressal Case No. 1 of 2009-10, has held that the entire 30 decimal land, appertaining to Plot No. 723, is a Gair Majarua Aam Kabristan land, hence, the petitioner herein as also one Sappu Kumar Mishra do not have any ownership rights over the same, as such the Circle Officer, Maner, is required to initiate encroachment proceedings & remove the encroachment made over the said land in question, whereafter, the Circle Officer, Maner has initiated encroachment proceedings, vide Encroachment Case No. 1 of 2024-25 qua the petitioner. The aforesaid order dated 26.05.2010 has not been challenged till date, hence has become final. Therefore, this Court is of the view that the petitioner has miserably failed to make out any case so as to warrant any interference in the present case.

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

(Mohit Kumar Shah, J)

Ajay/-

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

