

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17689 of 2022

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1. Bijay Kumar Poddar, son of Ramswarup Poddar, R/o Ward No. 36, Shastri Nagar, Hasdah, P.O.-Gulabbagh, P.S.-Sadar, District- Purnea, Bihar- 854326.
 2. Kumar Rahul Singh, son of Dr. Randhir Bahadur Singh, Resident of Chandan Nagar, P.O.- Gulabbagh, Abdullahnagar, P.S.-Sadar, District- Purnea, Bihar- 854326.

... .. Petitioners

Versus

1. The State of Bihar.
2. The Prohibition Excise & Registration Department (Registration), Government of Bihar through the Principal Secretary.
3. The District Magistrate-cum-District Collector, Purnea, Bihar.
4. The Commissioner, Purnea.
5. The Sub Divisional Officer, Purnea.
6. The Circle Officer, Purnea East, Purnea, Bihar.
7. The Municipal Corporation, Purnea, Bihar.
8. The Municipal Commissioner, Municipal Corporation, Purnea, Bihar.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 17688 of 2022

1. Hari Kishan Sharma @ Hari Maharaj, son of Gokhul Ram Sharma, R/o Sonauli Chowk, Hasdah, P.O.-Gulabbagh, P.S.-Sadar, District- Purnea, Bihar- 854326.
2. Rishav Kumar Pugalia, son of late Umed Pugalia, R/o Sanauli Chowk, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
3. Amritansh Kumar, son of Anay Kumar Gupta, R/o Ward No. 36, N.H.-31, Ram Mohni Chow Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
4. Vijay Kumar Manjhi @ Vijay Manjhi @ Vijay Kumar Son of Ramesh Prasad Manjhi, R/o Lohapatti, N.H.-31, Gulabbagh, Hasdah, P.O. Gulabbagh, , P.S.- Sadar, District- Purnea, Bihar- 854326.
5. Navratan Mal Baid, Son of Gulab Chand Baid, R/o N.H.-31, Chandan Nagar, Hasdah, P.O.- Gulabbagh, , P.S.- Sadar, District- Purnea, Bihar- 854326.
6. Rahul Kumar Kedia @ Rahul Kumar, Son of Late Pramod Kumar Kedia, R/o Kedia Campus, Sanauli Chowk, Abdullah Nagar, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
7. Sundar Lal Sancheti, Son of Dhanraj Sancheti, R/o Near Mahavir Mandir,



- Hasdah, Gulabbagh, Hasdah, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
8. Savitri Devi W/o Indra Prasad, R/o Gulabbagh, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar,District- Purnea Bihar- 854326
 9. Ashok Kumar Baid Son of Manik Chand Baid, R/o Baid Bhawan, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
 10. Ashok Kumar Pandi @ Ashok Pandit, Son of Laxmi Pandit, R/o Sonauli Chowk, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 11. Bajranj Sancheti, son of Hanuman Sancheti, R/o Sonauli Chowk, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea, Bihar- 854326.
 12. Avinash Chandra Mishra Son of Aditya Nath Mishra, R/o Begeshwari Asthan, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea-Bihar- 854326.
 13. Ganesh Kumar Mandal @ Ganesh, Son of Late Prem Lal Mandal, R/o Ward No. 36, Near Marketing Chowk, P.O. Gulabbagh, P.S. -Sadar, District- Purnea, Bihar- 854326.
 14. Yugal Kishore Borar Son of Kewal Chand Borar, R/o N.H.- 31, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 15. Mohan Lal Sancheti Son of Labh Chandra, R/o Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea, Bihar- 854326.
 16. Akhilesh Chandra @ AKhilesh Chandra Mishra Son of Aditya Nath Mishra, R/o Bageshwari Asthan, P.O. Gulabbagh, P.S. -Sadar, District- Purnea-Bihar- 854326.
 17. Om Prakash Sharma, Son of Jora Ram Sharma, R/o Near Hanumanganji Temple, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 18. Anand Kumar Modi, Son of Doman Lal Modi, R/o Sonauli Chowk, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea, Bihar- 854326.
 19. Mohammad Parvez Alam Son of Md. Kamruddin, R/o Sonauli Chowk,Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea-Bihar- 854326.
 20. Ranjan Kumar Gosh, Son of Gopal Chandra Gosh, R/o City Road, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 21. Mahaveer Mistri, Son of Madan Mistri, R/o Ward No. 36, Shastri Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 22. Jai Singh Golchha Son of Bachhraj Golchha, R/o Bageshwari Asthan, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 23. Pushjeet Kumar Son of Baldev Prasad Saha, R/o Naya Tola Line Bazar, Purnea, P.O. and P.S. K. Hat, District- Purnea-854301.



24. Bishwajit Kumar Son of Baldev Prasad Saha, R/o Naya Tola, Line Bazar, Purnea, P.O.- Purnea, P.S. Sahayak K. Hat, District- Purnea- 854301.
25. Sukhdeo Saha @ Sukhdeo Prasad Saha, Son of Harihar Prasad, R/o Ward No. 37, Saha Market, Lohapatti Chowk, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
26. Parwati Devi W/o Baijnath Modi, R/o Ward No. 12, Madar Ghat, Kasba, Purnea, P.O. and P.S. - Kasba, District- Purnea-854330.
27. Hari Prasad Chaudhary S/o Rit Lal Choudhary, R/o Sonauli Chowk, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
28. Mohammad Rustam Khan Son of Babu Khan, R/o Gandhi Nagar, Hasdah Road, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
29. Mayank Kumar Ranka, son of Nirmal Kumar Ranka, R/o Gulabbagh, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
30. Ramesh Prasad Verma, son of Sarda Prasad Verma, R/o Sardar Tola, Near State Bank, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
31. Gyan Prakash Son of Badri Ram R/o Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District-Purnea, Bihar-854326.
32. Bishwanath Agrawal, Son of Satyanarayan Agawal R/o Greater Kailash, Part- II, P.O.- Greater Kailash, P.S.- Chittranjan Park, South Delhi-110048.
33. Dhanraj Pugalia, Son of Meghraj Pugalia, R/o Ward No. 39, Sonauli Chowk, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
34. Masomat Sulekha Choudhary @ Sulekha Devi, Wife of Basant Kumar Choudhary, R/o Marketing Yard, Soanauli Chowk, Hansdah, P.O.- Gulabbagh, P.S- Sadar, District- Purnea, Bihar- 854326.
35. Ravi Sancheti Son of Rajendra Sancheti, R/o Ward No. 37, Soanauli Chowk, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
36. Anand Kumar Sancheti, Son of Srichand Sancheti, R/o Sonauli Chowk, Abdullah Nagar, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
37. Raju Chaudhary Son of Jaganath Chaudhary, R/o House No. 602/19, Ward No. 3, VTC, Mehrauli, P.O.- Mehrauli, P.S. -Sadar, District- Hauz Khas, South Delhi- 110030.

... .. Petitioners

Versus

1. The State of Bihar.
2. The Prohibition Excise & Registration Department (Registration), Government of Bihar through the Principal Secretary.
3. The District Magistrate-cum-District Collector, Purnea, Bihar.
4. The Commissioner Purnea.



- 5. The Sub-Divisional Officer, Purnea.
 - 6. The Circle Officer, Purnea East, Purnea, Bihar.
 - 7. The Municipal Corporation, Purnea, Bihar.
 - 8. The Municipal Commissioner, Municipal Corporation, Purnea, Bihar.
- Respondents

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with

Civil Writ Jurisdiction Case No. 727 of 2023

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Arjun Kumar Sah, Son of Ghotan Prasad Sah, Resident of village - Sonauli Chowk, N.H. 31, Gulab Bagh, Purnea, District - Purnea.

... .. Petitioner

Versus

- 1. The State of Bihar.
 - 2. The Prohibition Excise & Registration Department (Registration), Government of Bihar through the Principal Secretary.
 - 3. The Commissioner, Purnea.
 - 4. The District Magistrate-cum-District Collector, Purnea, Bihar.
 - 5. The Sub-Divisional Officer, Purnea.
 - 6. The Circle Officer, Purnea East, District - Purnea, Bihar.
 - 7. The Municipal Corporation, Purnea, Bihar.
 - 8. The Municipal Commissioner, Municipal Corporation, Purnea, Bihar.
- Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 17689 of 2022)

For the Petitioners : Mr. Y.V. Giri, Sr. Advocate
Mr. Pranav Kumar, Advocate
Ms. Shrishti Singh, Advocate
For the State : Mr. Vivek Prasad, G.P.-7
For the Municipal Corporation: Prince Kumar Mishra, Advocate

(In Civil Writ Jurisdiction Case No. 17688 of 2022)

For the Petitioners : Mr. Y.V. Giri, Sr. Advocate
Mr. Pranav Kumar, Advocate
Ms. Shrishti Singh, Advocate
For the State : Mr. Vivek Prasad, G.P.-7
For the Municipal Corporation: Prince Kumar Mishra, Advocate

(In Civil Writ Jurisdiction Case No. 727 of 2023)

For the Petitioner : Mr. Jitendra Kumar Pandey, Advocate
For the State : Mr. Md. Khurshid Alam, AAG-12
For the Municipal Corporation: Prince Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
COMMON ORAL JUDGMENT



Date : 30-07-2024

Since the relief claimed in these writ petitions are same and similar, they have been heard together and are being disposed of by this common judgment.

2. In C.W.J.C. No.17689 of 2022, the petitioners are challenging the notices dated 07.11.2022 and 09.11.2022 issued by the Circle Officer, Purnea East, in Encroachment Case No.13 of 2022-23, whereby the petitioners have been declared as *encroachers* and they have been directed to file their show-cause as to why the encroachment should not be removed. Further prayer of the petitioners is to restrain the respondents from initiating any further proceeding against the petitioners under the provisions of the Bihar Public Land Encroachment Act, 1956 and also direct the respondents to restore *status quo ante* and reconstruct the residential-cum-commercial units of the petitioners which have been demolished by the respondents on 08.11.2022 pursuant to illegal notices issued by the Circle Officer and also award compensation to the petitioners.

3. In C.W.J.C. No.17688 of 2022, the petitioners are challenging the notices dated 07.11.2022, 09.11.2022 and 11.11.2022 issued by the Circle Officer, Purnea



East, in Encroachment Case No.13 of 2022-23, whereby the petitioners have been declared as encroachers and they have been directed to file their show-cause as to why the encroachment should not be removed. Further prayer of the petitioners is to quash the notice dated 01.12.2022 and similar notices issued by the Purnea Municipal Corporation for encroachment of road and directed the petitioners to pay a penalty of Rs.20,000/- and also to restrain the respondents from initiating any further proceeding against the petitioners under the provisions of the Bihar Public Land Encroachment Act, 1956.

4. In C.W.J.C. No.727 of 2023, the petitioner is challenging the notices dated 11.11.2022 and 13.12.2022 issued by the Circle Officer, Purnea East, in Encroachment Case No.13 of 2022-23, whereby the petitioner has been declared as encroacher and he has been directed to file his show-cause as to why the encroachment should not be removed. Further prayer of the petitioner is to restrain the respondents from initiating any further proceeding against the petitioner under the provisions of the Bihar Public Land Encroachment Act, 1956.

5. As the facts of all these cases are same and similar, the facts of C.W.J.C. No.17689 of 2022 are being taken



into consideration.

6. It is the cases of the petitioners that they are in possession of the land in question situated in Abdullah Nagar, Gulabbagh, Purnea, which was originally acquired by their ancestors through registered *Kabuliyats* executed by the then Raja P.C. Lal Chaudhary and ever since the petitioners or their ancestors have been in continuous physical and peaceful possession over the said land. Subsequently, after obtaining due approval and permission, the petitioners constructed residential and commercial units thereon and have been paying municipal tax. In the year 1952, the Sub-Divisional Officer, Public Works Department, Purnea approached the Court of the Additional Sub-Divisional Officer, Purnea in Case No.76 of 1952 to 82 of 1952 and 98 of 1952 to 134 of 1952 seeking eviction of the predecessors of the petitioners on the ground of encroachment but the said case was dismissed by the Additional Sub-Divisional Officer by an order dated 25.07.1953 holding that it was not a case of unauthorized occupation of the said property within the meaning of the statute, which is a determining factor for proceedings under the said Act. It was further observed in the said order dated 25.07.1953 that the predecessors of the petitioners had duly deposited rent and therefore they could not



be summarily evicted. The aforesaid order dated 25.07.1953 came to be challenged before the Collector, Purnea in Appeal No.79 of 2015, which was allowed vide order dated 17.02.1954. Being aggrieved by the order of the Collector, the predecessors of the petitioners filed a Revision before the Commissioner, who vide order dated 14.07.1954 allowed the revision and set aside the order of the Collector by holding that the case does not fall within the ambit of the Land Encroachment Act since the possession was acquired by means of a valid lease from the District Board and the State had even accepted the rent for one year and therefore the occupation/possession could by no means be considered as unauthorized. The Court of the Commissioner went ahead and observed that if the State wanted to proceed against the predecessors of the petitioners, the proper recourse would be through the Civil Court. Aggrieved by the order dated 14.07.1954 passed by the Commissioner, the respondents approached the Board of Revenue, Bihar by filing Case No. 528 of 1954, but the same was dismissed by an order dated 10.02.1955.

7. It is also the case of the petitioners that after lapse of more than two decades i.e. on 10.08.1975 the respondent authorities visited the land in question along with



Amins and demarcated certain portion of the land and directed to demolish the demarcated portion of the land. Against the action of the respondents, the predecessors of the petitioners approached this Court by filing C.W.J.C. No.1739 of 1975. This Court vide Judgment and order dated 23.02.1977 reported as **1977 (25) BLJR 581** has categorically held that in view of Section 116 read with Section 106 of the Transfer of Property Act, 1882, only a civil suit would be the legal remedy available to the respondents and the petitioners were entitled to a declaration by this Court that they could be evicted only in due course of law and they could not be forcibly evicted from the lands which are in their possession. However, suddenly once again the proceedings were initiated before the learned Court of the Sub-Divisional Officer, Purnea in Case No.103 of 2013 but the proceeding was dropped with respect to some of the petitioners vide order dated 12.09.2013. In doing so, reliance was placed on the fact that the matter had previously been addressed and had earlier travelled from the Court of the SDO, Purnea to the Court of Member, Board of Revenue as well as before this Court.

8. It is further the case of the petitioners that though no further proceeding took place in light of the order



dated 12.09.2013 passed by the S.D.O, Purnea but fresh set of notices were issued in Encroachment Case No.13 of 2022-23 by the Circle Officer under Section 3 of the Land Encroachment Act, 1956 on 07.11.2022, 09.11.2022 and 11.11.2022 declaring the petitioners as encroachers and also directed them to file their show cause. On 08.11.2022 the residential-cum-commercial units of both the petitioners were demolished within one and half hour after pasting the notices and thereafter, on 09.11.2022 a subsequent notice was issued to the petitioner no.1 directing him to be present on 24.11.2022 with his show-cause against the proposed demotion. Even though the units were already demolished, the petitioner no.1 herein submitted his response to the alleged notice dated 09.11.2022 on 24.11.2022 because about 37 similarly situated persons had also received parallel notices but no action has yet been initiated against them.

9. The petitioners of C.W.J.C. Nos.17688 of 2022 and 727 of 2023 are challenging the notices issued by the Circle Officer, by which they have been declared as encroachers and have been directed to file their show-cause as to why encroachment should not be removed. The petitioners of C.W.J.C. No.17689 of 2022 are also challenging the aforesaid notices issued by the Circle Officer as well as the demolition



exercise carried out by the respondent authorities, by which the residential-cum-commercial units of the petitioners have been demolished and also for awarding compensation.

10. Learned Senior Counsel for the petitioners submits that the issue of unauthorized encroachment had attained finality vide order dated 14.07.1954 passed by the Commissioner, Bhagalpur by which the order of the S.D.O, Purnea dated 25.07.1953 was restored, the order dated 10.02.1955 passed by Member, Board of Revenue affirming the order of the Commissioner and finally by judgment and order of this Court dated 23.02.1977 passed in C.W.J.C 1739 of 1975 (*Ritlal Choudhary & Ors. vs. The District Magistrate, Purnea & Ors.*) reported in **1977 (25) BLJR 581**. Therefore, any fresh proceeding is barred in terms of doctrine of *res judicata*. He further submits that the land in question was settled in favour of the petitioners or their predecessors by the District Board as early as 1930-1940 and even if the petitioners are considered lessees, the legal recourse for the respondent authorities would have been to approach the competent Civil Court for a decree, as was even observed by this Court in its judgment and order dated 23.02.1977, however till date the respondents have chosen not to invoke the correct forum and are harassing the present



petitioners.

11. Learned Senior Counsel for the petitioners has placed reliance on the decisions rendered in the cases of *M/s Hindustan Petroleum Corporation vs. State of Bihar & Ors.* reported as *AIR (1996) Patna 163; Amrit Versha Hindi Dainik vs. BSAM Board (1999) 1 PLJR 1* and has submitted that demolition of structures can never be used as a handy substitute for eviction of tenants and lessees, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated.

12. Learned Senior Counsel for the petitioners has also placed reliance on the law laid down by the Hon'ble Supreme Court in the case of *Sopan Sukhdeo Sable & Ors versus Assistant Charity Commissioner & Ors.* reported as *(2004) 3 SCC 137* and *Krishna Ram Mahale vs. Mrs. Shobha Venkat Rao* reported as *(1989) 4 SCC 131* wherein it has been held that where a person is in settled possession of property, even on assumption that he has no right to remain in that property, he cannot be disposed by the owner except by recourse to law.

13. Learned Senior Counsel for the petitioners has also relied upon a decision of the Hon'ble Supreme Court



rendered in the case of ***Gulabchand Chhotalal Parikh vs. State of Gujarat*** reported as ***AIR 1965 SC 1153*** wherein it has been held that on general principles of *res judicata*, the decision of the High Court on a Writ under Article 226 will operate as *res judicata* in a subsequent regular suit between the same parties with respect to same subject matter.

14. Learned Senior Counsel for the petitioners further submits that the action of the respondents authorities in demolishing the structures/units is illegal and without jurisdiction as the procedure established under Section 3 of the Bihar Public Land Encroachment Act mandates furnishing of at least two weeks' time to the concerned person for putting forth his/her case but in the present case no adequate notice was given to the petitioners prior to demolishing their units and therefore, the action of the authorities in demolishing the units/structures of the petitioners is violative of principle of natural justice.

15. It has also been argued by learned Senior Counsel for the petitioners that Section 2(1) read with Section 3 of the Act mandates that only the Collector is empowered to initiate proceedings and the Government of Bihar has not notified the Circle Officer as a Collector for the purposes of discharging the functions under the Act, therefore, the impugned



notices are illegal and without jurisdiction.

16. In this cases, the District Magistrate-cum-Collector, Purnea has filed a counter affidavit wherein it has been stated that the land in question is belonging to the National Highway Authority of India (for short “NHAI”) on which Ganga Darjeeling Highway is situated. In compliance of the order dated 20.12.2022 passed by this Court, a joint inquiry was conducted by the S.D.O, Sadar, Purnea as well as the DCLR, Sadar, Purnea, consequent to which, a report was submitted vide Memo No.97 dated 21.01.2023 stating therein that the property in question belongs to the N.H.A.I. and the *Jamabandi* is also running in the name of the NHAI. The respondents have denied and disputed the claim of the petitioners regarding the land in question being acquired by their predecessors through registered *Kabuliyats* executed by the then Raja P.C. Lal Chaudhary.

17. It has also been stated in the counter affidavit that neither the District Board, Purnea nor the NHAI had ever settled the property in question in favour of the petitioners or their ancestors and as a consequence, the present petitioners are in unauthorized occupation of the land in question. Since the property in question belongs to the NHAI which is supported by the *Jamabandi* reflecting the name of NHAI, the petitioners are



not entitled to any relief in their favour as prayed for in these writ petitions.

18. In response to the contention of the petitioners regarding blatant highhandedness of the respondents and non-issuance of proper notices, it is stated in the counter affidavit that prior information has been given for removing the temporary structures by loudspeakers conducted by Municipal Corporation, Purnea since 01.11.2022 on regular intervals and in light of the same, temporary shed was demolished and for permanent structures due notices were issued for submitting show cause. As per the provisions of the Bihar Public Land Encroachment Act, 1956, more than two weeks' time was provided to the petitioners before taking any adverse action against the permanent structures.

19. On the contention of competency/capacity of the Circle Officer, it has been stated that since the Circle Officer has acted as the Collector under the said statute, he is empowered to issue notices under the Bihar Land Encroachment Act, 1956. It has also been stated that the judgment and order dated 23.02.1977 passed by this Court in C.W.J.C. No.1739 of 1975 was limited to not evicting the occupants forcibly and only by following due process of law. It has also been alleged in the



counter affidavit that severe inconvenience is being caused to the general public on account of illegal encroachment which therefore necessitates its removal. The road approaching the disputed land is approximately 170 feet but around the disputed property, it is hardly 60 feet, resultantly, there is a lot of traffic congestion since people comes to Purnea from the same highway and due to highway being narrower around the disputed land, the site became an accident prone site and lot of accident occur at the place. Moreover, all the public utilities including the Hospital, Medical College are located on this road, thus making the road encroachment free is imperative.

20. It has been argued that a writ petition should normally not be considered/entertained against mere issuance of show cause notice. In support of this submission, reliance has been placed on a decision of the Hon'ble Supreme Court rendered in the case of *Commissioner of Excise, Haldia vs. M/s Krishna Wax (P) Ltd.* AIR ONLINE 2019 SC 1527.

21. In this case, the D.C.L.R. Purnea has also filed a counter affidavit and reiterated the stand taken by the District Magistrate, Purnea that the land in question belongs to the NHAI on which National Highway namely Ganga Darjeeling Highway is situated. It has been stated in the counter



affidavit that the doctrine of *res judicata* shall not apply in the present case since this Court in CWJC No.1739 of 1975 had only decided that eviction proceedings be carried only by following due process of law and did not venture into deciding the title/ownership of the petitioners. This Court did not acknowledge the structures built by the petitioners over the encroached land as being legally built, rather the said judgment was limited to deciding the procedure of eviction to be done following due process of law, and therefore, the observation of this Court means that the structures built by the petitioners are in fact illegal. During measurement exercise carried by the authorities, the petitioners were found to be encroached the Government land and therefore encroachment proceedings were initiated in Encroachment Case No. 13 of 2022-23. Moreover, no Court of law has ever passed any stay order on initiation of encroachment proceedings against the petitioners.

22. It has also been stated in the counter affidavit that the proceedings initiated by the S.D.O vide Case No 101 of 2013 and 103 of 2013, were only dropped against the petitioners and were not acknowledged as *Raiyats*. Even on the date of the said order dropping proceedings against the petitioners passed by the S.D.O, Purnea i.e. on 12.09.2013, the land belonged to



the NHAI as per MS Survey and even the *Jamabandi* is continuously running in the name of the NHAI and not in the name of the petitioners.

23. The Purnea Municipal Corporation has also filed a counter affidavit in the matter and reiterated the stand taken by the District Magistrate and the D.C.L.R. that the land in question belongs to the NHAI and raised a preliminary objection that since the petitioner has not made the NHAI as a party in this proceeding, this petition suffers from non-joinder of necessary party and is liable to be dismissed on this ground alone. Further, the petitioners have constructed commercial building without adopting due course of law. It has also been stated in the counter affidavit that it is settled law that holding tax receipt or rent receipt is only for fiscal purpose and does not create any title.

24. The petitioners have filed a rejoinder to the counter affidavits. In the rejoinder affidavit, it has been stated that the submission of the respondents that the land in question belongs to the NHAI had not been considered by this Court as early as in the year 1977 in C.W.J.C. No. 1739 of 1975 and once the petitioners are held to be legal occupants and the same had reached a stage of finality in various proceedings including



before this Court, now the respondents cannot take the plea that the land in question belongs to the NHAI.

25. In the rejoinder, it has further been stated that the during the pendency of the writ petition, the ancestors of the instant petitioners had filed two separate writ petitions before this Court bearing C.W.J.C. No.4344 of 1988 and C.W.J.C. No.4847 of 1988 against the fresh initiation of proceedings under Section 6 of the Bihar Land Encroachment Act, 1956 which to the best knowledge of the petitioners were quashed by this Court. Further, in the joint-inquiry report dated 21.01.2023 as also the report of the Additional Chief Executive Officer, District Board, Purnea, it is mentioned that the documents in relation to settlement and lease are not available on record but mere unavailability of documents does not negate the stand of the petitioners regarding settlement of the land in question by the District Board, Purnea, when previous proceedings have specifically recorded the existence of such settlement to conclude that the petitioners or their ancestors were not unauthorized encroachers.

26. In reply to the contention of the respondents that the NHAI is a necessary party in the proceedings as the land in question belongs to the NHAI, it is submitted by learned



Senior counsel for the petitioners that the NHAI is not a necessary party since it is not the case of the petitioners rather that of the respondent that the land in question purportedly belongs to the NHAI. Moreover, the NHAI has never declared that the land in question has been encroached. It has also been stated that the action of the respondent authorities in demolishing the structures/units is illegal and without jurisdiction as even assuming but not conceding the applicability of the Act, the procedure laid under section 3 of the Bihar Public Land Encroachment Act, for initiation of proceeding has not been complied which clearly mandates furnishing at least 02 weeks' notice to the concerned for making and presenting the defence. However, in the present case, no adequate notice even as mandated under the statute was given to the petitioners. To further illustrate, it is submitted that for petitioner no.1, the notice was pasted merely two hours prior to the demolition exercise and for petitioner no.2 no such notice was ever issued prior to demolition. Therefore, the impugned action of demolition by the respondent authorities is not only illegal but also violative of principles of natural justice and the petitioners are entitled for compensation for illegally demolishing their residential-cum-commercial units on 08.11.2022.



27. I have considered the submissions of the parties and also perused the materials on record.

28. The notices issued by the Circle Officer have been challenged by the petitioners in these writ petitions. The main reliance is on a judgment of this Court passed in the case of **Ritlal Choudhary & Ors. vs. District Magistrate And Ors. Choudhary** reported as **1977 (25) BLJR 581**. The entire order of this Court reads as under:-

“1. The petitioners have prayed for restraining the respondents from demolishing their structures, which they describe to be permanent structure, situated in Gulab, Bagh, ward No.20 of Purnea Municipality on the following averments made in the writ petition. There are 37 petitioners in this case and they have stated that they have built permanent structures, residential-cum-commercial, in ward No. 21 in Gulab Bagh, one of the quarters of the Purnea Municipality. Their case is that these structures are coming from before 1950 and they had been constructed after obtaining the sanction of the Municipality. To the year 1952 the Public works Department through the Sub-divisional Officer, Purnea. initiated a proceeding under Section 5 of the then Bihar Land Encroachment Act, 1950 for removal of the alleged encroachment in respect of the premises belonging to the petitioners. In that



case the case of the opposite party, some of whom are petitioners was that the G.D. Road and the lands adjacent to it formerly belonged to the District Board and the District Board had settled the road side lands beyond demarcation pillars with Raja P.C. Lal with liberty to construct shops and houses thereon. It may be stated here that Raja P.C. Lal is dead and his son Kumar P.C. Lal is petitioner No.28. Raja P.C. Lal in his turn had settled some of the lands with other opposite parties in that case and since then they have been coming in possession after creating shops and houses thereon. The said G.D. Road was subsequently made over to the Provincial Government for maintenance and the contention was that rent was accepted from some of the opposite parties and as such those opposite parties were holding over under Section 116 of the Transfer of Property Act on the same terms and conditions, as before, even after the expiry of the period of settlement. It was also contended therein that under the definition of (1) "public property" contained in the Land Encroachment Act, 1950 such lands would not come under the mischief of the Act. The contention of the opposite party was accepted by the Additional Sub-divisional Officer on the 5th July, 1953, a copy of which order has been filed as Annexure 'I'. This was set aside in appeal by the Collector by his order dated 17th February, 1954, which was



set aside by the Commissioner by his order dated the 14th July, 1954, a copy of which has been filed as Annexure 2, and the order of the Additional Sub-divisional Officer restored. This order has been affirmed by the Board also by order dated the 10th February, 1955, a copy of which has been filed as Annexure '3'. The petitioners have asserted that thereafter they remained in peaceful possession till the 10th August, 1975, when some officials of Lateral Road Project Division No. 1, Bahadurganj at Purnea, came along with Amin and overseers and arbitrarily started demarcating a considerable portion of the premises of the petitioners situated in Gulb Bagh, Ward No. 21, and asked the petitioners to demolish a part of their premises demarcated by them, on the threat of demolition by force in case of non-compliance of their direction by the petitioners within two weeks. It is also alleged that on the 17th August, 1975 the officer of the Lateral Road Project Department came with labour force and the petitioners apprehended that their premises would be demolished illegally and unauthorisedly. Accordingly on the 18th August, 1975, the petitioners filed this writ application which was admitted on the 19th August, 1975, and the respondents were directed to maintain the status quo till the disposal of the writ petition. A counter-affidavit has been filed on behalf of



respondents 1 to 4 denying the assertions made in the writ petition and that the settlement with Raja P.C. Lal was for a short period without any right to construct any substantial structure. Raja P.C. Lal had also no right to sub-let it to any body and after the expiry of the lease with Raja P.C. Lal the petitioner should be ranked as trespassers. It is also stated in paragraph 2(g) of the counter affidavit that only from Ritlal Choudhury, Champa Lal Pugalia, father of petitioner Kanhaiyalal Pugalia (petitioner No. 29) and Mouzi Lal rent was accepted under ignorance of the true position which was directed to be refunded. The other, allegations about forcible demolition on the 17th August, 1975, or of any coercive action against the petitioners under Miss etc. for removal have been denied. The petitioners have filed a reply to the counter-affidavit to which it is not necessary to refer.

- 2. Mr. Singh also submitted that the petitioner's case in any event will be one of holding over and they are entitled to a notice. In view of Section 116 read with Section 106 of the Transfer of Property Act and in view of the earlier order under the Land Encroachment Act a suit would be the only remedy. It is needless to go into this question for the reason that in absence of the State of Bihar the question whether the case of the petitioners or which of them would be one of holding over could only be decided in presence of the State.*



We do not, therefore, propose to decide this question.

3. *The petitioners, however, are entitled to a declaration by this Court that they could be evicted only in due course of law and they could not be forcibly evicted from the lands which are in their possession. This order will be without any prejudice to the right of the respondents or the authorities to take such proceeding, as they might be advised, under any appropriate statute including the Code of Civil Procedure.*

4. *With the above observations and directions, the writ petition is disposed of. In the circumstances of the case, we make no order as to costs.”*

29. The aforesaid judgment and order was passed by this Court on 23.02.1977. By the said judgment and order, the respondents are restrained from forcibly evicting the petitioners from the lands which are in their possession and it was also held that the petitioner could be evicted from their lands only following the due course of law under any statute including the CPC. Thereafter, the State sat over the matter and now the State has initiated the proceeding against the petitioners and has given notices to them under the Bihar Public Land Encroachment Act declaring the petitioners as encroachers and directed them to file their show-cause as to why the



encroachment should not be removed. The contention of the petitioners is that no proceeding under the Bihar Land Encroachment Act can be initiated against them in view of the fact that the issue of encroachment had already attained its finality in terms of the judgment and order dated 23.02.1977 passed in *C.W.J.C. No.1739 of 1975 (Ritlal Choudhary & Ors. vs. The District Magistrate, Purnea & Ors.)* reported in *(1077) 25 BLJR 581*. However, the contention of the respondent-State is that the land in question is belonging to the NHAI but the NHAI has not been made a party in these writ petitions.

30. In view of such a large number of the petitioners, it is not possible for this Court to examine individual cases of each petitioner in one writ petition. Moreover, the petitioners have not annexed relevant document with the writ petitions in support of their claim individually.

31. In these circumstances, the disputed questions of facts i.e. whether the land/road belongs to the N.H.A.I. or not; whether the predecessors of the petitioners were settled the land in question or not and whether the petitioners can be proceeded under the Bihar Land Encroachment Act or not in view of the earlier judgment of this Court, can only be decided after the petitioners appear before the Circle Officer, file



their show-cause and their cases are decided by the Circle Officer individually.

32. Considering the aforesaid facts, these writ petitions are disposed of with a liberty to the petitioners to appear before the Circle Officer concerned, file their show-cause and lead their evidences so that all the issue can be decided by the Circle Officer. The petitioners are also at liberty to raise the preliminary objection with regard to the maintainability of the proceedings in view of the earlier proceedings which have been decided in favour of some persons under whom the petitioners claim their right.

33. The Circle Officer shall be obliged to consider the case of the petitioners individually and will decide the case after hearing them. In the proceeding, the Circle Officer can hear the NHAI also as the respondent-State is claiming that land in question belongs to the NHAI.

34. If the decision goes against the petitioners, the Circle Officer will be obliged to supply a copy of the order to the petitioners. The petitioners will be at liberty to file an appeal or approach appropriate Court/Forum by filing appropriate application against the order of the Circle Officer.

35. No coercive step shall be taken against the



petitioners for removal of the structures/premises, which are being sought to be demolished, till one month after the supply of the order of the Circle Officer if the order goes against the petitioners.

36. In so far as allegation that the petitioners of C.W.J.C. No.17689 of 2022 were not given sufficient opportunity of hearing before their premises were demolished is concerned, they are also entitled to proper hearing in the encroachment proceeding. They are given liberty to file an appropriate civil suit for the illegal demolition of their premises. If such suit is filed by them in the District Court, Purnea then the same shall be decided expeditiously preferably within one year of its filing.

37. With the aforesaid observations and directions, these writ petition stand disposed of.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	30.07.2024.
Transmission Date	

