

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16674 of 2023

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1. Devendra Prasad Son of Dwarika Mahto, Resident of Village- Khoja Gachhi, P.S.- Silao, District- Nalanda.
 2. Anandi Prasad, Son of Late Dwarika Mahto,
Both Resident of Village- Khoja Gachhi, P.S.- Silao, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Revenue and Land Reforms department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Patna.
3. The District Collector, Nalanda.
4. The Sub Divisional Officer, Rajgir, Nalanda.
5. The Circle Officer, Silao, Nalanda.
6. The Executive Officer, Nagar Panchayat, Sialo, Nalanda.
7. The Chairman, Nagar Panchayat, Sialo, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Prasad, Advocate
For the Respondent/s : Mr.Md. Khurshid Alam (Aag 12)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-01-2024

Heard Mr. Sanjay Prasad, learned counsel appearing

on behalf of the petitioner and Mr. Md. Khurshid Alam learned

AAG 12 for the State.

2. Petitioners have filed the writ petition *inter alia* for

following relief(s):-

(I) That this is an application for issuance of a writ in the nature of certiorari or any appropriate writ's, order's, direction's commanding the respondents for quashing of the notice vide Letter No 973 dated 03-10-2023 and notice vide letter No 974 dated 03-10-2023 issued by the Executive Officer, Nagar Panchayat, Silao whereby and whereunder direction has been given to the petitioners to appear before the office of Executive Officer, Nagar Parishad, Silao within three days of receiving of notice to explain as why not stop of the petitioners which has been constructed over the gairmazarua land near NH 82 Bypass comes under territorial jurisdiction of



Nagar Panchayat, Silao in spite of that the petitioners have purchased the land in question by registered sale deed and they are paying property tax regularly to Silao Nagar Panchayat.

II. For direction the respondents to restrain from taking forcible possession to the petitioners land pertaining to Mauza Silao, Thana No 420, Khata No253, Khesra No1863 rakba 0.467 decimal and to demolish the shop of the petitioners because the petitioners have right, title and possession over land on the basis of registered sale deed since 2007.

iii For passing any such order and direction in the interest of justice and ends of justice in favour of the petitioners in the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioners submits that once the right has been created and the petitioners have been satisfactorily making payment of the holding tax as per the assessment made by the municipal authorities, applicable in the area from year 2009 when the petitioners had come into possession over the land appertaining to khata No.253, Khesra No.1863, total area 0.467 decimals, the authorities at the same time cannot proceed to issue notice and demolish the shop constructed over the said piece of land for which the holding tax has been fixed. Petitioners have occupancy right.

4. Learned counsel appearing on behalf of the State submits that the petitioners have filed objection before the municipal authorities, however, the same is pending.

5. No counter affidavit has been filed in spite of the fact that the matter is pending and was taken up on 08.01.2024.

6. Having considered the rival submissions made on



behalf of the parties, as well as, the averment made in the writ petition, the grievance of the petitioners is that they are in possession over the land, as described in above paragraph since the year 2009 and after constructing the shop, the municipal authority, after measuring the said shop, has assessed the required amount of municipal tax to be paid and the petitioners without default have been making payment of municipal tax in accordant with law, now the authorities by issuing notice, cannot proceed to demolish the shop in the manner without following the prescribed procedure in accordance with law. Whether the land is a *Gairmazaura* land or owned by the petitioners makes no difference, since the right, title and interest and the right to occupy is the species of property. The Apex Court in the case of ***DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, reported in (2003) 5 SCC 622*** has held that the right of ownership can be entertained or taken away only by reason of a statute. The parties have remedy before competent civil court. If advice, they may avail appropriate remedy.

7. In the meantime, the notices dated 03.10.2023, as contained in Annexure P / 5, are held to be without jurisdiction and contrary to the own act of the Municipal authority are



hereby set aside and quashed.

8. With aforesaid observations and directions, the present writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.01.2024
Transmission Date	NA

