

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11615 of 2021

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Sudhir Kumar Roy son of Ram Balihari Rai resident of village Basudeopur,
P.S. Kalyanpur, District Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.
4. The District Magistrate cum- Collector, Samastipur.
5. The Circle Officer, Kalyanpur, Anchal in the District of Samastipur.
6. The Deputy Development Commissioner, Samastipur.
7. The Block Development Officer, Kalyanpur in the District of Samastipur.
8. The Gram Panchayat, Basudeopur under Kalyanpur Block through its Mukhiya.
9. The Mukhiya, Gram Panchayat Basudeopur under Kalyanpur Block in the District of Samastipur.
10. Chandra Shekhar Sahani son of Ram bilas Sahani resident of village Basudeopur, P.S. Kalyanpur, District Samastipur.
11. The Lalbabu Sahani son of Ram bilas Sahani resident of village Basudeopur, P.S. Kalyanpur, District Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.
For the Respondent/s : Mr. Md. Khurshid Alam (Aag12)

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 10-07-2025

In the instant petition, the petitioner has prayed

for following relief(s):-

“I. To direct the respondent to remove the encroachment from the part portion of the land of the petitioner bearing Khata No.01, Plot No. 301 (Old) measuring area 7 katha 15 dhur situated at Mauza Basodeopur under Kalyanpur Block in the district of Samastipur



as the respondent No. 7 to 11 have encroached the part portion of the land of the petitioner by constructing house to the land of the petitioner from P.M. Aabas Yojana scheme.

II. Also for any other relief/reliefs for which the petitioner are found to be entitled in the eye of law.”

2. Learned counsel for the petitioner submits that the petitioner has purchased a piece of land bearing Khata No.01, Khesra No.301(Old) measuring area 07 katha, 15 dhur situated at Mauza Basudeopur from one Ram Chandra Prasad Singh through registered sale deeds as mentioned in para 4 of the writ petition. After purchasing the said land, the same was muted in the name of his father and after death of his father, mother of the petitioner came in possession and was paying rent to the State Government. He further submits that respondent nos. 10 and 11 started to construct house in the portion of the land in question for which the petitioner protested and made complaint to the respondent nos. 4, 5 and 7 and requested for removal of the encroachment.

3. Learned counsel for the respondents submits that in para 11 of the counter affidavit filed on behalf of respondent nos. 4 to 7 it is stated that the grievance regarding removal of encroachment from the land in question, cannot be decided by the respondents because the land in question is not the



Government land rather a “raiyatee land”. It is submitted that the dispute arose on account construction of house by the respondent nos. 10 and 11 on the portion of the land of the petitioner as submitted by the learned counsel for the petitioner. He further submits that there is dispute between the private parties over the land in question and therefore, the present writ is not maintainable.

4. The Hon’ble Supreme Court in *catena* of judgments has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special and extra-ordinary should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon’ble Supreme Court in the case of ***Sohan Lal Vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in



(2015) SCC 423 are quite relevant.

5. In the case of **Sohan Lal (supra)**, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

6. In the case of **Radhey Shyam (supra)**, Hon'ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the



law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

7. On the basis of submission made by both the parties, it is crystal clear that the dispute arose on the land bearing Khata No.01, Khesra No.301(Old) measuring area 07 katha, 15 dhur situated at Mauza Basudeopur between both the parties, in this respect the constitutional court cannot have jurisdiction to decide the title involved in the disputed land.

8. In the light of the discussion made above, the disputed aspect with respect to the title over the land cannot be decided in writ jurisdiction and the appropriate remedy, in the facts and circumstances of the case, is before the Civil Court.

9. Accordingly, the present writ petition is disposed of with liberty to the petitioner to approach before the appropriate authority/forum.

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	AFR
CAV DATE	10.07.2025
Uploading Date	11.07.2025
Transmission Date	N/A

