

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17271 of 2014

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Kapildeo Prasad S/o Late Sadashiv Prasad Resident of Village / Mohalla
Rampur Baignabad, Bihar Sharif, P.S. Bihar, District Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Nalanda.
3. The Circle Officer, Bihar Sharif, Nalanda.
4. Council of Allama Iqbal College and Allied Institutions, Bihar Sharif, Nalanda.
5. The Principal of Allama Iqbal College, Bihar Sharif, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Malendu, Advocate
For the State	:	Mr. Rakesh Kumar Shrivastava, AC to GP 16
For the Resp. Nos. 4 & 5 :		Mr. Manoj Priyadarshi, Sr. Advocate
		Mr. Amit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

16 25-07-2025 Heard learned counsel for the petitioner, learned
counsel for the respondent nos. 4 and 5 and learned counsel
appearing for the State.

2. In the present writ application, the petitioner has
prayed for grant of the following reliefs:-

*“(a) Directing the Respondent
Authorities to comply with and to enforce the
order dated 3.3.11 passed by the Ld. CO (Respt.
no. 3) in land encroachment case no. 33/2009-10
(Anx-2).*

*(b). Directing the Respts. Authorities
to remove the encroachment as per the order of*



Ld. CO (Anx-2) and subsequent notice dated 10.6.13 (Anx-3).

(c) Directing the Respts. Authorities to remove the already illegal constructed building of the college in question and clear the Aam Rasta as the land in question is Gair Mazarua Aam land and over which the Respt. 2nd party has no right.

(d) Any other relief and reliefs for which the petitioner may be found entitled to.”

3. During the course of argument, learned counsel for the petitioner admits that this writ application exclusively relates to Land Encroachment Case No. 33/2009-10. To this effect statement has also been made in Para 4 and 5 of writ application.

4. By order dated 20.03.2025, the District Magistrate, Nalanda was directed to file an affidavit personally sworn by him and annexe the photographs also which would suggest that the authorities have removed the encroachment over 10 decimals of land in question. In compliance of the said order dated 20.03.2025, the District Magistrate, Nalanda has filed the supplementary counter affidavit and in paragraph nos. 5, 6, 7, 8 and 9 of the said supplementary counter affidavit, it has been categorically stated as follows:



“5. That in pursuance to the aforesaid direction an enquiry team led by the S.D.O., Biharsharif including the D.C.L.R., Biharsharif was constituted by the respondent District Magistrate, Nalanda vide letter no. 2944, dated 12.07.2024 with direction to make physical enquiry in the light of the facts given rise in the present writ petition in presence of the writ petitioner and to submit report.

6. It is also stated that direction of this Hon’ble Court, the S.D.O., Biharsharif, was directed by District Magistrate, Nalanda vide letter no. 2945, dated 12.07.2024 to enquiry as whether encroachment in question has been removed or not? If the encroachment is found then encroached land should be removed from encroachment as per rules and submit compliance report.

7. That in compliance to the direction of the Hon’ble Court vide order dated 10.07.2024 in C.W.J.C. No. 17271/2014 as well as memo no. 2944, dated 12.07.2024 issued by the respondent District Magistrate, Nalanda the enquiry was submitted by the team visiting at the spot on 01.08.2024. It is further stated that it is mentioned in report that during enquiry it was found that the encroachment done on Nala by constructing main gate by Alama Iqbal College, Biharsharif was removed in presence of the Magistrate and police forces. However, it



was found that a wall situated inside main gate of Alama Iqbal College, Biharsharif is dostana wall of a mosque. However, in course of removal of the encroachment of dostana wall a large number of persons belonging Muslim community assembled there, and made protest, and such situation was expected to develop communal tension, as a result of which remaining part of the encroachment could not be removed by the respondent Circle Officer, Biharsharif. The joint enquiry report vide memo no. 1932, dated 05.08.2024 has been submitted under joint signature of the S.D.O., Biharsharif and the D.C.L.R., Biharsharif mentioning therein the entire facts as stated above, which were found in joint enquiry.

8. It is stated that S.D.O., Biharsharif has reported vide letter no. 881, dated 06.08.2024 that area under encroachment was 10 decimal, area removed from encroach was 5.95 decimal, area yet to be removed from encroachment is 4.05 decimal, area which is still under encroachment other than wall of mosque is 02 decimal Najri Naksa of measurement report has been submitted by the S.D.O., Biharsharif.

9. That it may not be out of place to mention here that the entire proceeding of encroachment was conducted in the light of final order passed in land Encroachment Case



No. 33/2009-10 as contained in memo no. 363, dated 08.03.2011 issued by the respondent Circle Officer, Biharsharif, by which the public land in question bearing Khata No. 68, Khesra No. 1191, Area 10 decimal situated in Mauza-Rampur Baignabad, Thana No. 110, which has been encroached by the Alama Iqbal College, Biharsharif.”

5. From the aforesaid statement made by District Magistrate, Nalanda, it is clear that as per the District Magistrate, Nalanda, the encroached 10 decimal land which was a subject matter of Land Encroachment Case No. 33/2009-10 has been completely removed and in support of that photographs have also been enclosed. With respect to other encroachments other than 10 decimal of land which was the subject matter of Land Encroachment Case No. 33/2009-10, another Land Encroachment Proceeding No. 01/2025-26 has been separately initiated and is being proceeded by Circle Officer, Biharsharif. It is pertinent to point out that this writ application relates to Land Encroachment Case No. 33/2009-10 and has nothing to do with Land Encroachment Case No. 01/2025-26.

6. In view of the categorical statement made by the District Magistrate, Nalanda that the encroachment from 10



decimal of land which was the subject matter of Land Encroachment Case No. 33/2009-10 has been completely removed, this writ application is disposed of in light of this statement with a clear observation that the petitioner would be at liberty to approach this Court with evidence, if it is found by the petitioner that the encroachment still subsists.

7. Learned counsel for the petitioner submits that he has filed an Interlocutory Application No. 03 of 2025 in which prayer has been made for expediting the proceeding of Land Encroachment Case No. 01/2025-26 initiated against the respondent nos. 4 and 5. This prayer is totally misconceived and cannot be allowed in the present writ application for the reason that this writ application exclusively relates to and arises out of Land Encroachment Case No. 33/2009-10 and has nothing to do with the Land Encroachment Case No. 01/2025-26.

8. The Interlocutory Application No. 03 of 2025 is therefore dismissed.

9. For the reasons stated above, in view of the clear statement of the District Magistrate, Nalanda that all encroachment from 10 decimal of land which was subject matter of Land Encroachment Case No. 33/2009-10 has been removed and no encroachment exists any more, this writ



application is disposed of giving liberty to the petitioner to approach this Court in case he is able to demonstrate that the encroachment still subsists.

10. With the aforesaid observation and direction, the present writ application is disposed of with liberty granted as above.

(Alok Kumar Sinha, J)

Ranjeet/-

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