

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1020 of 2019

In
Civil Writ Jurisdiction Case No.7321 of 2019

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Shivnandan Prasad @ Shivnandan Yadav Son of Late Lalu Mahto @ Lila Yadav, Resident of Pichhuli, Tola Pathra, P.S.- Mekaur, P.O.- Medhuki, District- Nawada.

... .. Appellant/s

Versus

1. The State of Bihar through Collector, Nawada.
2. The Additional Collector Nawada.
3. The Sub-Divisional Officer Rajauli, District- Nawada.
4. The Circle Officer, Meskaur, District- Nawada.
5. Chandrika Chouhan, Son of Late Shyam Chouhan, resident of Richhuli Tola Pathra, P.S.- Mekaur, P.O.- Medhuki, District- Nawada.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Madhav Krishna, Advocate
		Mr. Akhilesh Kumar, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

8 19-06-2025

Re: I.A. No. 01 of 2019

Heard I.A. No. 01 of 2019.

2. There is a delay of about 104 days in filing L.P.A.
No. 1020 of 2019, for the reasons stated in application read with
the affidavit, delay stands condoned.

3. Accordingly, I.A. No. 01 of 2019 stands disposed
of.



Re: LPA No. 1020 of 2019

With consent of the respective parties the matter is taken up for final disposal.

2. In the writ petition, petitioner has prayed for the following relief(s):-

“This application is being filed for issuance of an appropriate writ/writs, direction/directions, directing the respondents to remove the encroachment from a part of Governement Land bearing New Khata No. 213, Plot No. 2720 situated in Thana No. 35, Mauza Pichhuli Tola upon which private respondent in connivance of Circle Officer, is constructing Pakka House and closed the road used by petitioner along with other Villagers.”

3. The learned Single Judge has proceeded to pass the following order on 09.04.2019 and it reads as under:-

“Learned counsel for the petitioner with reference to Annexure-4 submits that C.O. has exercised his jurisdiction of power to remove the encroachment of land but encroachment has not ben removed as yet.

Under the Public Land Encroachment Act, it shall be obligation of the authority to take appropriate step for removal of encroachment of land if the C.O. has held out that there exist encroachment but he has not taken action in accordance with law for removal of encroachment, then he shall adopt corrective measure and take appropriate action permissible under the Bihar Public Land Encroachment Act for removal of



encroachment at the earliest preferably within a period of 60 days.

With the aforesaid the writ application disposed of.”

4. Combined reading of relief sought in the writ petition read with the order of the learned Single Judge, writ petition itself is not maintainable in view of the fact that certain disputed issues are involved to the extent or nature of the land whether is it a government land or private land?

5. Respective parties have remedy before the jurisdictional Civil Court. In this regard, it is necessary to take note of the Hon’ble Supreme Court decision in the case of ***Shalini Shyam Shetty and Anr. vs. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329*** insofar as entertaining writ petition under Article 226 of the Constitution of India of the subject matter of disputed issues, writ Court has no jurisdiction, which reads as under:-

“59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In ***Mohd. Hanif v. State of Assam*** reported in ***(1969) 2 SCC 782*** a three Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. In coming to the aforesaid conclusion in ***Mohd.***



Hanif v. State of Assam reported in (1969) 2 SCC 782 this Court referred to the Constitution Bench decision in *T.C. Basappa v. T. Nagappa* reported in AIR 1954 SC 440.”

6. Be that as it may, respective counsels for the parties on instructions, submitted that subject matter of land is already subject matter of Civil Suit before the concerned Civil Court in Title Suit No. 301 of 2018. In the light of these facts and circumstances, order of the learned Single Judge dated 09.04.2019 passed in CWJC No. 7321 of 2019 stands set aside. LPA No. 1020 of 2019 stands allowed while rejecting the CWJC No. 7321 of 2019. Pending I.A.(s) if any, stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit Kumar/-

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