

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.764 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Aurangabad

Vijay Sharma, Son Of Late Tapeswar Narain Singh, R/O Village- Munjharh
Tola, Bhatan Bigha, P.S.- Haspura, Dist.- Aurangabad

... .. Petitioner/S

Versus

1. The State of Bihar, Patna
2. Shalik Ram Paswan, Son Of Late Vaselal Paswan, R/O Village- Munjharh
Tola, Bhatan Bigha, P.S.- Haspura, Dist.- Aurangabad
3. Jairam Yadav, Son Of Late Ramnandan Yadav, R/O Village- Munjharh Tola,
Bhatan Bigha, P.S.- Haspura, Dist.- Aurangabad
4. Raju Yadav, Son Of Jairam Yadav, R/O Village- Munjharh Tola, Bhatan
Bigha, P.S.- Haspura, Dist.- Aurangabad
5. Pappu Yadav, Son Of Lallan Yadav, R/O Village- Munjharh Tola, Bhatan
Bigha, P.S.- Haspura, Dist.- Aurangabad
6. Siyavaran Rajbanshi, Son Of Late Bal Kishun Rajbanshi, R/O Village-
Munjharh Tola, Bhatan Bigha, P.S.- Haspura, Dist.- Aurangabad
7. Ram Chandra Yadav, Son Of Late Basu Yadav, R/O Village- Munjharh Tola,
Bhatan Bigha, P.S.- Haspura, Dist.- Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar Sharma, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 08-07-2025 1. Possession and ownership of a portion of plot no.
1307, situated at Mazuhan Mahamdpur, Tauji No. 146 within
the jurisdiction of Daudnagar Police Station is disputed.



2. It is the case of the petitioner that the ancestors of the petitioner was Jamindars of the concerned locality including the land in question. After abolition of Jamindari system, the said plot no. 1307, measuring about 21 decimal, was recorded as *Gairmazrua* owner.

3. It is submitted by both the learned Advocates that land characterized as “*Gairmazrua*” is the land appertaining to the homestead.

4. It is contended by the learned Advocate appearing on behalf of the petitioner, referring to Section 5 of the Bihar Land Reforms Act, 1950 that with effect from the date of vesting all homesteads comprised in an estate or tenure and being in the possession of an intermediary on the date of such vesting shall, [subject to the provisions of Sections 7A and 7B] be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent, provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground rent as may be determined by the Collector in the present manner.

5. If the claim of an intermediary as to his possession



over such homestead or as to the extent of such homesteads is disputed by any person within three months from the date of such vesting, the Collector shall, on application, make such inquiry into the matter as he deems fit, and pass such order as may appear to him to be just and proper.

6. It is contended by the learned Advocate for the petitioner that the character of the land was recorded in the original record of rights as “Makan Me Sahan”, meaning thereby land appertaining to the homestead. The said land was considered as the part of the homesteads and accordingly it was recorded in the name of the *Gairmazrua* owner. The petitioner being the owner has been paying taxes to the Government. Since the local people disturbed the possession of the petitioner, he initiated a proceeding under Section 145 of the Cr.P.C., alleging, inter alia, that dispute concerning the land in question would likely to cause breach of peace. The Executive Magistrate, Daudnagar held that the disputed land falls under *Gairmazrua* owner, on which it does not seem justify to declare any party's possession and occupation.

7. The petitioner has challenged the said order dated 19th of September, 2023 in the instant revision on the ground that *Gairmazrua* owner can always claim the property recorded



in the name of the owner. Had it been a public land, land record would have been *Gairmazrua* Aam meaning thereby *Gairmazrua* land under the possession of the public.

8. In the instant case, even after the finding that the land in dispute was recorded as *Gairmazrua* owner, the Executive Magistrate, Daudnagar acted illegally and with material irregularity holding inter alia that no declaration can be made in favour of any person with regard to possession and occupation of the said land.

9. It is contended on behalf of the opposite party, on the other hand, that the opposite party nos. 2 and 7 do not have any stake over the land. They do not know as to why they were made parties in the proceeding under Section 145 of the Cr.P.C. as well as the present revisional application.

10. It is further contended by the learned Advocate for the opposite parties that the Government has constructed a platform over the said land for the villagers, measuring about 25 feet x 25 feet. The said platform is used for different functions organized by village people. The platform was constructed about 20/25 years back. At this stage, the petitioner cannot claim ownership over the said portion of land on which platform was constructed on the ground that the said land is part of plot no.



1307.

11. Having heard the learned counsels for the parties, this Court finds that the issue involved in the instant dispute relates to ownership of land. The Criminal Court cannot decide as to whether the present petitioner is the owner of the land or the land belongs to the Government over which admittedly construction was made by the Government. Civil Court is the competent Court where efficacious relief lies to the petitioner. If this Court passes any order, it touches upon the ownership of the land in question.

12. Therefore, this Court is not in a position to pass any order upon the instant revision. At the same time, this Court is of the view that the Executive Magistrate, Daudnagar cannot declare ownership of *Gairmazrua* owner over the land in question in a proceeding under Section 145 of the Cr.P.C.

13. Accordingly, the impugned order passed by the Executive Magistrate on 19th of September, 2023 suffers from patent illegality and material irregularity.

14. The impugned order is accordingly set aside.

15. The parties are directed to maintain status quo over the land in question.

16. This order of status quo, however, will not



disentitle the Civil Court to pass any order upon any application for injunction, if so filed, in accordance with law.

17. With the above direction, the instant revision is disposed of.

(Bibek Chaudhuri, J)

uttam/-

U			
---	--	--	--

