IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5410 of 2024

CNR No. BRHC010263652024

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1. Md. Sadir Kohinoor, Son of Abdul Gafoor, resident of Mohalla- Ganga Sagar, Allalpatti, P.S. - Laheriasarai, District- Darbhanga.
2. Nudrat Jahan, Wife of Md. Gulam Waris, resident of Mohalla - Ganga Sagar, Allalpatti, P.S. - Laheriasarai, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Darbhanga Division, Darbhanga.
2. The Commissioner Darbhanga Division, Darbhanga.
3. The District Magistrate-cum-Collector, Darbhanga.
4. The Additional Collector, Darbhanga.
5. The Circle Officer, Sadar, Darbhanga.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Iqbal Asif Niazi, Advocate
For the Respondent/s : Mr. Government Pleader 22
Mr. Uday Prasad, AC to GP 22

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR

CAV JUDGMENT

Date : 05-11-2026

Heard learned counsel for the petitioners and learned counsel for the State.

2. That the instant writ application is being filed for the following relief/reliefs :-

> *"(i) For issuance of a writ in the nature of Certiorari for quashing the notice dated 08.12.2023 issued by the Circle Office, Sadar, Darbhanga by which the petitioner has been directed to remove the encroachment over Khesra No.865, Area-325 sq.ft. situated at Ganga Sagar Pokhar pursuant to order dated 23.12.2014 passed in Encroachment Case No.3/2014-15 inspite of the fact that the petitioner has brought to the knowledge of Circle*

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Officer, Sadar, Darbhanga that they have not encroached over the aforesaid land and they have constructed their residential house on Khata No.54 (old) Khesra No.838 (old)/ 1478 (new) purchased by sale deeds dated 31.08.2005 and Jamabandi No.1761 and 1762 are running and the petitioners are residing in their residential house.

(ii) For further to hold that the Encroachment Case No.3/2014-15 which has been initiated has nothing to do with the residential house of the petitioners and the petitioners have not encroached over the government land.

(iii) For further to restrain the concerned authorities from proceeding pursuant to notice dated 08.12.2023 and not to demolish the residential house of the petitioners.

(iv) For any other relief or reliefs for which the petitioners may found entitled."

3. The case of the petitioners is that they purchased one Katha of land by two sale deeds, bearing Deed Nos. 14460 and 14461 dated 31.08.2005, of ten Dhur each, pertaining to Khata No. 54, Khesra No. 838 (old)/1478 (new), situated at Mohalla Ganga Sagar, Allalpatti, Darbhanga. Jamabandi Nos. 1761 and 1762 were created in their names, they pay rent receipts, and the Land Possession Certificate has been issued by the Circle Officer. They have constructed their residential house, and are residing there with their family and are paying holding tax. There is a big tank known as "Gangasagar Tank" in Mohalla Gangasagar, and between the tank and the road there are several plots of raiyati land in possession of recorded tenants. Due to long erosion of the vacant land adjoining the plots of the

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petitioners and other occupants, the raiyati land looks like part of the tank. When the State authorities, without properly measuring the area of the tank and the raiyati land, started disturbing the residents and instituted an encroachment case, one Sangeeta Devi and two others approached this Court in CWJC No. 24638 of 2018, after which by order dated 16.08.2019, this Court directed the State respondents to make a fresh measurement of the tank and the land over which the construction stands, and directed that *status quo* be maintained. The petitioners state that the matter is still pending and the *status quo* order continues. The Circle Officer, Sadar, Darbhanga then issued the notice dated 08.12.2023, directing the petitioners to remove the encroachment over Khesra No. 865, area 325 sq. ft., at Ganga Sagar Pokhar. The petitioners are aggrieved by this notice, as they say they have not encroached on that land.

4. Learned counsel for the petitioners submitted that the State respondents, without complying with the order dated 16.08.2019 and without properly measuring the pond and the land on which the construction stands, proceeded to disturb the peaceful possession of the petitioners and others and that the petitioners therefore filed this writ application, in which *status*

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quo was granted on 29.03.2024. During its pendency, on legal advice, the petitioners filed Title Suit No. 676 of 2026. In which they seek a declaration of their right and title over the house, purchased by registered sale deed dated 31.08.2005, and confirmation of possession. They also seek a declaration that no part of C.S. Plot No. 838, is under encroachment or, alternatively, that they have acquired title by adverse possession over more than 25 years. They further seek a permanent injunction. An application under Order 39 Rules 1 and 2 and Section 151 CPC was filed in that suit. It was further submitted that in Title Suit No. 445 of 2019, filed by one Bhartendra Jha on 17.11.2019, the State defendant stated in paras 8, 9 and 10 of its show cause that the Amin's report had been submitted and was under consideration of this Court, that the stay of this Court was continuing, and that, as the stay was in existence, there was no need for a parallel hearing. Because of this, the civil court passed no order. It was also submitted that despite this stand, the respondents issued the notice dated 08.12.2023 to remove the encroachment, failing which action would be taken under Section 188 of the IPC and as such, this notice compelled the petitioners to approach this Court and is contrary to the State’s own statement before the civil court.

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5. Learned counsel for the petitioners further submitted that the Jamabandi is still running in the names of the petitioners and has not been cancelled by any competent authority. It was also submitted that the legal position is well settled that no encroachment case can proceed unless and until the Jamabandi is running in the name of the parties, and that since it is operative here, the encroachment proceeding cannot be sustained. Reliance was placed on this Court's decision in CWJC No. 720 of 2017, which set aside an order passed under the Bihar Public Land Encroachment Act and held that the State can take possession only if it succeeds in a title suit. Reliance was also placed on CWJC No. 236 of 1994 reported in PLJR 2011 (1) 532, affirmed by the Division Bench as reported in PLJR 2016 (4) 122 and in LPA No. 1155 of 2010 reported in PLJR 2016 (3) 972. According to the Learned counsel for the petitioners, those decisions hold that summary proceedings under the encroachment law cannot proceed where there are serious disputes of right, title, interest or possession. It was lastly submitted that the State's contradictory stand in the title suit and in the notice is not sustainable in law. The notice is therefore said to be illegal, arbitrary and without jurisdiction, and Encroachment Case No. 03/2014-15 has nothing to do with

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the petitioners' residential house.

6. Learned counsel for the State/Respondent Nos. 3 to 5 submitted, that after this Court's order dated 29.03.2024, the Circle Officer by letter No. 1018(MU) dated 29.03.2024 stayed the operation of the encroachment proceeding. It was also submitted that, for the proper development of three ponds (Gangasagar, Harahi and Dighi Pokhar) in Darbhanga town, instructions were given by the authority concerned and on the report of the Revenue Clerk and Anchal Amin, the land of Gangasagar Pokhar, C.S. Plot No. 865, was found encroached upon by 48 encroachers. After due process, the Circle Officer passed an order on 23.12.2014 declaring the encroachers, including petitioner No. 1, to be one of the encroachers whereas, Petitioner No. 2 was not declared an encroacher. It was also submitted that Jamabandi No. 1761 (petitioner No. 2) and Jamabandi No. 1762 (petitioner No. 1) do not bear C.S. Plot No. 865, and that the other C.S. plots are not the subject matter of Encroachment Case No. 03/2014-15 and that Petitioner No. 1 was declared an encroacher on the basis of the Anchal Amin's report, as he produced no document relating to C.S. Plot No. 865.

7. Learned counsel for the State/Respondent Nos. 3

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to 5 further submitted that Sangita Devi and others filed Encroachment Appeal No. 50/2015 before the District Magistrate, Darbhanga, which was decided on 20.06.2018. They then filed CWJC No. 24638 of 2018, which was disposed of by order dated 18.06.2019, with *status quo* being maintained. In accordance with that order, the land of Gangasagar Pokhar was re-measured in the presence of the encroachers, including petitioner No. 1, and a field note was prepared and signed by them. A joint report dated 03.07.2019 shows petitioner No. 1 at Serial No. 22 among 36 encroachers, and does not show petitioner No. 2 as an encroacher. A counter affidavit (Oath No. 2386 dated 08.07.2019) was filed in CWJC No. 24638 of 2018.

8. Learned counsel for the State/Respondent Nos. 3 to 5 also submitted that, pursuant to the order dated 21.07.2023 and other orders in CWJC No. 9692 of 2015 (Ram Punit Chaudhary v. State of Bihar and others), the Additional Chief Secretary, Revenue and Land Reforms Department, by memo No. 1359 dated 25.11.2021, directed that public land, including water bodies like pokhar and talab, be freed from encroachment. In compliance, the then Circle Officer passed an order on 08.12.2023 in Encroachment Case No. 03/2014-15, directing notice-II to be issued to the encroachers other than Sangita Devi

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and the other writ petitioners of CWJC No. 24638 of 2018. No notice-II was issued in the name of petitioner No. 2. It was lastly submitted that if the petitioners have any grievance against the order dated 23.12.2014 and the notice-II, they must file an encroachment appeal before the District Magistrate, Darbhanga under Section 11 of the Bihar Public Land Encroachment Act, 1956.

9. Having heard the parties and perused the record, it is evident that the petitioners have filed Title Suit No. 676 of 2026 during the pendency of this writ application. In which they seek a declaration of their right and title over the house situated over the land purchased by registered sale deed dated 31.08.2005, a declaration that no part of C.S. Plot No. 838 is under encroachment and, in the alternative, a declaration of title by adverse possession, along with a permanent injunction. Given the pendency of the Title Suit, it is relevant to discuss whether proceedings for removal of encroachment can be initiated under the Bihar Public Land Encroachment Act, 1956 (hereinafter “the Act”) while the title suit is pending.

10. This Court in ***Smt. Uma Devi Sinha v. State of Bihar,*** reported in ***2001 (2) PLJR 587***, held that where a serious question of title is involved, it cannot be decided under the Act.

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The proper remedy is to get the right declared by a competent civil court, and until the right is declared in favour of the State, the person in occupation cannot be evicted by summary proceedings under the Act.

11. The same view has been reiterated by a coordinate Bench of this Court in ***Shaila Devi & Ors. v. State of Bihar & Ors. (Misc. Appeal No. 318/2014)***, whereby it has been held that, where the occupant raises a *bona fide* dispute of title, the State cannot take recourse to summary proceedings under the Act and must first get its right declared by a competent civil court.

12. From the above, it is quite clear that the Act provides a summary procedure for quick removal of unauthorised occupants from public land. It is not meant to resolve complicated title disputes or ownership claims, which ought to be adjudicated by a competent civil court.

13. Consequently, the encroachment notice dated 08.12.2023 issued by the Circle Officer, Sadar, Darbhanga, in Encroachment Case No. 03/2014-15 is hereby quashed. It is further directed that the petitioners shall not be dispossessed or evicted from the land in question until Title Suit No. 676 of

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2026 is decided by the competent civil court. The respondents shall be at liberty to proceed in accordance with law after the disposal of the pending title suit.

14. With the aforesaid directions, this writ petition stands allowed.

(Alok Kumar, J)

khushbu/-

AFR/NAFR	A.F.R.
CAV DATE	01.09.2026
Uploading Date	05.11.2026
Transmission Date	

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