

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58926 of 2023

Arising Out of PS. Case No.-368 Year-2020 Thana- SUPAUL District- Supaul

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1. MD ISMAIL S/O MD. NASIR R/O VILLAGE- KHARAIL PARSA KARNPUR, PS. AND DIST. SUPAUL
 2. MD. ABDUL JABBAR S/O MD. ISMAIL R/O VILLAGE- KHARAIL PARSA KARNPUR, PS. AND DIST. SUPAUL
 3. MD. EKBAL @ MD. EKBAL ANSARI S/O MD. ISMAIL R/O VILLAGE- KHARAIL PARSA KARNPUR, PS. AND DIST. SUPAUL

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Patla Kumari, Adv.
For the Opposite Party/s : Mr.Rita Verma, APP

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 11-05-2026

Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. Petitioners seek quashing of the order of cognizance dated 30.05.2022 passed in connection with Supaul P.S. Case No. 368 of 2020 by which the learned Chief Judicial Magistrate, Supaul has taken cognizance of the offences under Sections 420, 447, 353/34 of the Indian Penal Code.

3. The order was passed in CWJC No. 6288 of 2020 arising out of Token No. 7037 of 2020. Allegation against the petitioners is that pursuant to the said order, the writ petitioners moved the appropriate Court. Pursuant to such action, the site was



inspected by a team of officials and the petitioners were found to have encroached upon the land.

4. Learned counsel for the petitioners submits that they also have a valid claim over the land. The question here is not as to which of the party is having a valid claim rather the question is that there exist special act namely the 'Bihar Public Land Encroachment Act' providing for declaring the person as encroacher and thereafter his removal. The said Act is sufficient to take care of the action alleged against the petitioners.

5. Learned counsel for the informant and learned Additional Public Prosecutor for the State have filed respective counter affidavits and vehemently opposed prayer for quashing of the order of cognizance dated 30.05.2022.

6. In the present case, the Bihar Public Land Encroachment Act, 1956 constitutes a complete and exhaustive code for dealing with encroachment upon public land in the State of Bihar. The Act prescribes a mandatory sequential procedure commencing with notice under Section 3, inquiry under Section 4, and culminating in a declaration and order under Sections 5 and 6. The status of 'encroacher' is not a self-evident fact; it is a legal finding that must be arrived at by the competent authority after due notice and hearing, in conformity with the principles of natural



justice. In the absence of such a declaration or even initiation of proceedings under the Act, the registration of an FIR under the provisions of the Indian Penal Code, alleging criminal trespass or related offences arising from the same act of alleged occupation, cannot be sustained. The allegations in the FIR, even if taken at their face value, do not *prima facie* constitute a cognizable offence, since the condition precedent to any such offence — the determination of encroachment by the competent authority — has not been satisfied. This squarely falls within category (a) of the illustrative categories laid down by this Court in ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335 (Para 102).

7. Moreover, the Bihar Public Land Encroachment Act, 1956 being a special statute providing efficacious redress, and the FIR having been lodged by resorting to the general criminal law before exhausting or even initiating the statutory remedy, the case also falls within category (f) of Bhajan Lal. As held by the Supreme Court in ***Sharat Babu Digumarti v. Govt. of NCT of Delhi*** reported in (2017) 2 SCC 18 (Para 37), it is a settled position in law that a special law shall prevail over the general and prior laws, and once the special provisions cover the act and the alleged offender, resort to the IPC is impermissible. Moreover, the matter as a whole arises from dispute over title of land and incidental



encroachment. The use of State machinery by invoking criminal action into motion being a general law has been resorted to by the complainant while by passing specific procedure related to such issue which is dealt by special law. While by passing special law that Bihar Public Land Encroachment Act, 1956 which is effective enough to deal with such case. Hence, by passing special law remedy by resorting to general law remedy, is impermissible and moreso, such act is nothing but malicious prosecution. Hence, this Court can't permit by passing of special law remedy over general law remedy specially when subject matter in both cases are the same and one.

8. Similarly in the case of ***Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.***, reported in ***(2023) 6 SCC 401*** (para 34) it was held that "One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim *leges posteriores priores contrarias abrogant* (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim *generalalia specialibus non derogant* (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one."



9. Allowing the FIR to stand in such circumstances would be to permit the State to use the machinery of criminal law to bypass mandatory quasi-judicial safeguards enacted for the protection of persons alleged to be in occupation of public land — safeguards that include the right to notice, the right to be heard, and the right of appeal.

10. This Court in exercise of its inherent powers under Section 482 Cr.P.C. is duty-bound to intervene to prevent abuse of the process of law.

11. In such view of the matter, the order of cognizance dated 30.05.2022 passed in connection with Supaul P.S. Case No. 368 of 2020 by the learned A.C.J.M-II, Supaul is quashed so far as the petitioners are concerned.

12. Accordingly, the present petition stands allowed.

(Ansul, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
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