

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15565 of 2023

- =====
1. Prem Kumar Son of Late Phunu Ram, Resident of Village- Chakand Station, Panchayat- Naugarh, P.S.- Chakand, District- Gaya.
 2. Niraj Kumar, Son of Late Mahesh Ram, Resident of Village- Chakand Station, Panchayat- Naugarh, P.S.- Chakand, District- Gaya.
 3. Pawan Kumar, Son of Late Lakhan Ram, Resident of Village- Chakand Station, Panchayat- Naugarh, P.S.- Chakand, District- Gaya.
 4. Yogendra Ram @ Yogendra Kumar, Son of Late Daroga Ram, Resident of Village- Chakand Station, Panchayat- Naugarh, P.S.- Chakand, Dist.- Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Patna
2. The Collector-cum-District Magistrate, Gaya.
3. The Circle Officer, Gaya Town, Gaya.
4. Onkar Kumar, Son of Ram Sarup Saw, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
5. Bhajan Yadav, Son of Late Gopalji Yadav, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
6. Mukesh, Son of Ram Chandra Yadav, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
7. Rajendra Prasad, Son of Late Ganesh Yadav, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
8. Sanjay Kumar, Son of Ganesh Saw, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
9. Dahu Mistri, Son of Late Keshwar Mistri, Resident of Tahi Bigha, P.S. Chakand, District- Gaya.
10. Umesh Pd. Verma, Son of Late Bhola Prasad, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.
11. Naresh Yadav, Son of Balgovind Yadav, Resident of Village- Salehpur, P.S.- Salehpur, District- Gaya.

12. Manoj Yadav, Son of Virendra Yadav, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.

... Respondent/s

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Acts/Sections/Rules:

- *Section 3(1), 6(1)(2) of the Bihar Public Land Encroachment Act, 1956*

Cases referred:

- *Nagendra Mistry vs. State of Bihar & Ors., reported in 2000 (1) PLJR 209*
- *Md. Jamalluddin & Ors. vs. the State of Bihar & Ors. reported in 2010 (2) PLJR 518*
- *State of Bihar & Ors. vs. Chandrabanshi Singh (Patna HC LPA No. 34 of 2015)*
- *Tripathy Kiran Nath Sharma vs. State of Bihar, reported in (2005) 4 PLJR 670*
- *S. M. Ehteshamul Hasan Rehmani vs. The State of Bihar & Ors. (Patna HC LPA No. 1106 of 2023)*
- *Ahmadulah Zafar Hasan vs. State of Bihar & Ors., reported in 2021 (2) PLJR 206*
- *Jai Singh vs. Union of India & Ors., reported in (1977) 1 SCC 1*
- *Delhi Gate Auto Service Station and Ors. vs. Bharat Petroleum Corporation Limited, Agra & Ors., reported in (2009) 16 SCC 766*
- *Satya Pal Anand vs. State of Madhya Pradesh & Ors., reported in (2016) 10 SCC 767*

Writ petition - filed for quashing the order passed by the Circle Officer in connection with Encroachment Case whereby 14 persons, including the petitioners have been declared to be encroachers of public land.

Held - Petitioners have prima facie failed to show any document from the records to satisfy this Court with regard to their right, title and interest over the land in question and have merely stated that they have filed a tile suit which is pending adjudication before the Principal Sub-Judge. (Para 5)

Mere issuance of rent receipts cannot create title to the land and can neither prove title nor possession with respect to the land in question. (Para 5)

Entry made in the khatiyani neither creates any right nor extinguishes any title. (Para 6)

Petitioners cannot be permitted to pursue two parallel remedies in respect of the same matter at the same time. (Para 7)

Issue raised in the present writ petition ought to have been raised in the aforesaid Title suit, thus the present writ petition is wholly misconceived. (Para 8)

Writ petition is dismissed. (Para 10)

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- 12. Manoj Yadav, Son of Virendra Yadav, Resident of Village- Chakand Station, Panchayat- Chakand, District- Gaya.

... .. Respondent/s

Appearance:
For the Petitioner/s : Mr. Basant Kumar Chaudhary, Sr. Advocate
Mr. Arvind Kumar, Advocate
For the State : Mr. Sajid Salim Khan, SC-25



Ms. Prakritita Sharma, AC to SC-25

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date: 17-01-2025

The present writ petition has been filed for quashing the order dt. 07.08.2023, passed by the Circle Officer, Gaya Town, in connection with Encroachment Case No.11 of 2016-17 whereby 14 persons, including the petitioners have been declared to be encroachers of public land. The petitioners have also prayed for quashing the order dated 14.09.2023, passed in Encroachment Appeal Case No.14 of 2023, by the District Magistrate, Gaya, whereby and whereunder the appeal filed by the petitioners against the order dated 07.08.2023, passed by the Circle Officer, Gaya Town, in Encroachment Case No.11 of 2016-17, has been rejected and the Circle Officer, Gaya Town has been directed to remove the encroachment in question.

2. The brief facts of the case, according to the petitioners are that the petitioners are in possession of a piece of land appertaining to Khata No.127, Plot No.266 (admeasuring 1232 sq. feet), Plot No.267 (admeasuring 4620 sq. feet), Plot No.267 (admeasuring 2750 sq. feet) and Plot No.302 (admeasuring 639 sq. feet), situated at village-Nawgarh, P.S.-Chakand, District-Gaya. It is submitted that the ancestors of the petitioners used to



pay rent to Captain Maharaj Kumar Gopal Sharan Narayan Singh Saheb Bahadur, who, by way of assignment through registered deed of assignment dated 15.09.1940 became owner of the land in question. It is also stated that the revisional survey authorities had committed some errors, leading to the plot in question being recorded as Anabad Bihar Sarkar.

3. The learned senior counsel for the petitioners has, at the outset, submitted that the petitioners along with two other persons have filed a title suit, bearing Title Suit No.129 of 2017, which is pending adjudication before the learned Court of Principal Sub-Judge-1st, Gaya for declaration of right, title and possession of the petitioners over the land in question, in which the petitioners have also filed a petition for grant of injunction, thus, it is submitted that the petitioners should not be disturbed of their possession over the land in question, till the final outcome of the aforesaid title suit, filed by the petitioners. Reference in this connection has been made to a judgment rendered by a co-ordinate Bench of this Court in the case of *Nagendra Mistry vs. State of Bihar & Ors.*, reported in **2000 (1) PLJR 209**, as also upon the one rendered by a co-ordinate Bench of this Court in the case of *Md. Jamalluddin & Ors. vs. the State of Bihar & Ors.* reported in **2010 (2) PLJR 518**.



4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, that in the Revisional Survey record of rights, the aforesaid land in question stands recorded as ‘Anabad Sarb Sadharan’ and in the said records, neither the name of the petitioners nor their ancestors are recorded, showing them to be in possession of the land in question. It is further submitted that on the basis of the report submitted by the Anchal Amin, encroachment proceedings were initiated by the Circle Officer, Gaya Town, Gaya, vide Encroachment Case No.11 of 2016-17, whereafter notices under Section 3(1) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the ‘Act, 1956’) were issued to the petitioners and others whereupon spot inspection was made by the Circle Officer, Gaya Town along with Halka Karmchari and Anchal Amin, as also the encroachers were directed to produce documents, if any, to show their right, title and interest over the land in question, by filing their show-cause. However, the petitioners, instead filed a copy of the plaint of the aforesaid Title Suit No.129 of 2017, pending before the learned Court of Sub-Judge-I, Gaya, but did not produce any order of injunction, hence the Circle Officer, Gaya Town had passed the final order under Section 6(1) of the Act, 1956 on



07.08.2023, whereafter notices were issued to the encroachers including the petitioners under Section 6(2) of the Act, 1956, but in the meantime, the encroachers had challenged the said order dated 07.08.2023 by filing an appeal, however, the said appeal bearing Encroachment Appeal Case No.14 of 2023 has been dismissed by the District Magistrate, Gaya by an order dated 14.09.2023, whereafter a date had been fixed for removal of the encroachment in question. It is contended that as far as Jamabandi No.04/3, running in the name of one Santoshi Devi, with regard to land appertaining to Khata No.127, Plot No.266 (admeasuring 1.26 acres) is concerned, recommendation has been made for cancellation of the same.

5. I have heard the learned senior counsel for the petitioners as also the learned counsel for the respondents and this Court finds that the petitioners have *prima facie* failed to show any document from the records to satisfy this Court with regard to their right, title and interest over the land in question and have merely stated that they have filed a tile suit bearing Title Suit No.129 of 2017, which is pending adjudication before the learned Court of Principal Sub-Judge-I, Gaya. In fact, the petitioners have also failed to show that their names/their ancestors' names stand recorded in the record of rights against



the entry made of the aforesaid plots in question. As far as reliance on rent receipt is concerned, it is a well settled law that mere issuance of rent receipts cannot create title to the land and can neither prove title nor possession with respect to the land in question. In this regard, reference be had to a judgment dated 15.12.2015, passed by the learned Division Bench of this Court in LPA No. 34 of 2015 (***State of Bihar & Ors. vs. Chandrabanshi Singh***) as also to a judgment dated 5.10.2005, rendered by a co-ordinate Bench of this Court, in the case of ***Tripathy Kiran Nath Sharma vs. State of Bihar***, reported in (2005) 4 PLJR 670. It would be gainful to refer to a recent judgment dt. 10.05.2024, rendered by the Ld. Division Bench of this Court, in the case of ***S. M. Ehteshamul Hasan Rehmani vs. The State of Bihar & Ors.*** (LPA No. 1106 of 2023 & analogous case), paragraph no.19 whereof is reproduced herein below:-

“19. It is well settled that acceptance of rent by the State Government or issuing rent receipt does not create a title over the land. Thus, the claim of the appellants based on rent receipts does not make the case of the appellants better. Moreover, there is no estoppel against law. The State is not bound by the acts of its officers, if the same has been done by them outside their authority or power of the public authority to make it. Any action done unauthorizedly and without jurisdiction does not bind the



State Government, is well settled law.”

6. It is equally a well settled law that entry made in the khatiyani neither creates any right nor extinguishes any title. Reference in this connection be had to a judgment rendered by the learned Division Bench of this Court in the case of ***Ahmadullah Zafar Hasan vs. State of Bihar & Ors.***, reported in ***2021 (2) PLJR 206***, paragraph no.6 whereof is reproduced herein below:-

“6. It is settled proposition of law that entry made in Khatiyan neither creates any title nor extinguishes any title, as such, the learned Single Judge has rightly observed appellant to take recourse to Civil Court of competent jurisdiction for declaration of his right, title and possession over the land in dispute.”

7. Another aspect of the matter is that the petitioners cannot be permitted to pursue two parallel remedies in respect of the same matter at the same time. Reference in this connection be had to the following judgments rendered by the Hon’ble Apex Court :-

(i) Judgment rendered by the Hon’ble Apex Court in the case of ***Jai Singh vs. Union of India & Ors.***, reported in ***(1977) 1 SCC1***;

(ii) Judgment rendered by the Hon’ble Apex Court in the



case of *Delhi Gate Auto Service Station and Ors. vs. Bharat Petroleum Corporation Limited, Agra & Ors.*, reported in (2009) 16 SCC 766; and

(iii) Judgment rendered by the Hon'ble Apex Court in the case of *Satya Pal Anand vs. State of Madhya Pradesh & Ors.*, reported in (2016) 10 SCC 767.

8. Now coming back to the present case, admittedly the petitioners have filed a title suit before the learned Trial Court with regard to declaration of their right, title and possession over the land in question, in relation to which the petitioners have been held to be encroachers by the Circle Officer, Gaya Town, by an order dated 07.08.2023 passed in Encroachment Case No.11 of 2016-17, which has also been upheld by the District Magistrate, Gaya, by an order dated 14.09.2023, passed in Encroachment Appeal Case No.14 of 2023, hence the issue raised in the present writ petition ought to have been raised in the aforesaid suit, thus the present writ petition is wholly misconceived.

9. Now adverting to the judgments referred to by the learned senior counsel for the petitioners, rendered in the cases of *Nagendra Mistry* (supra) and *Md. Jamalluddin* (supra), this Court finds that the same are not applicable in the facts and



circumstances of the present case, inasmuch as the petitioners have already approached the learned Civil Court of competent jurisdiction by filing a title suit and secondly, the petitioners have not produced any document much less any cogent proof to prove their right, title and interest over the land in question.

10. Having regard to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the present writ petition, hence the same stands dismissed, however, with a caveat that such petitioners, in whose favor *Jamabandi* is existing shall not be disturbed of their possession over the land in question, till the time *Jamabandi* is cancelled. Nonetheless, this Court directs that status quo, existing as on today, qua the land/houses of the petitioners in question, shall be maintained for a period of six weeks from today, in order to enable the petitioners to obtain an order granting injunction, from the Ld. Trial Court, in the aforesaid pending suit.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	12.11.2024
Uploading Date	17.01.2025
Transmission Date	NA

