

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10913 of 2018

Sharda Devi Wife of Bachcha Prasad resident of Mohalla - Ward No. - 9,
Narkatiyaganj, P.O. Narkatiyaganj, P.S. - Narkatiyaganj, District - West
Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Bihar, Patna.
2. The District Magistrate-cum-Collector, West Champaran at Bettiah.
3. The Additional Collector, Narkatiyaganj, West Champaran Bettiah.
4. The Sub-Divisional Officer, Narkatiyaganj, West Champaran.
5. The Deputy Collector Land Reforms, Narkatiyaganj, West Champaran.
6. The Circle Officer, Circle Office, Narkatiyaganj Block, At and P.O. and P.S.
- Narkatiyaganj, West
7. Panna Lal Sharma son of Bharat Sharma resident of Village - Dhaminaha,
P.O. - Musahara, P.S. - Sathi, District - West Champaran Bettiah.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Praveen Prabhakar, Advocate
For the Respondent/s : Mr.Raj Kishore Roy- GP18

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 06-09-2022

The present writ petition has been filed for quashing the notice dated 03.04.2018, issued by the Circle Officer, Narkatiyaganj i.e. the respondent no. 6, whereby and whereunder the husband of the petitioner has been directed to remove the alleged encroachment made over the encroached road situated at Ward no. 23, Narkatiyaganj Nagar Parishad, West Champaran, Bettiah. It is also prayed to restrain the respondents from demolishing the construction erected by the



petitioner on her private land.

2. The brief facts of the case according to the petitioner are that the petitioner is the owner of a piece of land situated at Tauzi no. 951, Khata no. 89, carved out of Plot no. 458, Ward no. 23, Narkatiyaganj Nagar Parishad, Narkatiyaganj, having a total area of 8 dhurs, which was purchased vide registered sale deed dated 04.02.1980, whereafter, the petitioner got her name mutated in the records of the Circle Office, Narkatiyaganj as well as in the records of the Nagar Parishad, Narkatiyaganj and then she had constructed her house over the said land in the year 1987 and left 03 feet wide land adjacent to her gate towards road for entrance and for enabling her four-wheeler vehicle to enter her house, apart from leaving 02 feet wide strip of land in front of her house for the purposes of construction of drain etc. It is the further case of the petitioner that suddenly her husband came to know that a notice dated 03.08.2011 has been issued by the authorities of the respondent-Board in connection with Encroachment case no. 16 of 2008-09, whereby he was asked to file his reply by 17.09.2011. The husband of the petitioner is stated to have inquired about the said notice, whereupon he came to know that the said case has been instituted wrongly in his name, whereafter an inquiry was held by the Circle Amin



and it was found that encroachment has been made by one other person namely Kudeshwar Sharma. The husband of the petitioner had then appeared before the respondent no. 6 and filed his reply, nonetheless, he was served with the aforesaid impugned notice dated 03.04.2018, whereby and whereunder, in the garb of some order having been passed by the Hon'ble High Court, in a writ petition bearing C.W.J.C. no. 24310 of 2013, the husband of the petitioner has been directed to remove the encroachment in question by 19.04.2018, situated over Khata no. 89, Khesra no. 458.

3. The learned counsel for the petitioner has submitted that as far as the aforesaid writ petition bearing C.W.J.C. no. 24310 of 2013 is concerned, a co-ordinate bench of this Court vide order dated 23.06.2017 had granted liberty to the petitioner of that case to file appropriate representation before the respondent no. 4, whereupon the respondent authorities were directed to implement the order dated 02.01.2012, passed in Encroachment case no. 16 of 2008-09, in accordance with the provisions of the Act, after giving due opportunity of being heard to the affected persons, in case the said order dated 02.01.2012 has not been either challenged or modified or quashed by any authority or court. It is further submitted by the learned Senior counsel for



the petitioner that the petitioner has not made any encroachment and moreover, neither the petitioner nor her husband have ever been given any opportunity of hearing in compliance of the aforesaid order dated 23.06.2017, passed by a co-ordinate Bench of this Court in C.W.J.C. no. 24310 of 2013, prior to issuance of the aforesaid notice dated 03.04.2018, hence the said notice dated 03.04.2018 is fit to be quashed. It is also submitted that merely on the basis of some illegal report of Anchal Amin dated 05.05.2009, the respondent no. 6 has illegally found that the petitioner has made encroachments.

4. *Per contra*, the learned counsel for the respondent-State has submitted that upon a complaint being filed, alleging therein that the petitioner and her husband namely Bachcha Prasad have encroached the road situated towards the southern boundary of their plot, appertaining to Khata no. 89, Plot no. 458, report was called for by the respondent no. 6 from the Revenue Clerk of the concerned Halka, whereafter, the respondent no. 6 vide order dated 03.05.2010 had ordered to initiate proceeding and ask for evidence/ reply from the husband of the petitioner. It is further submitted by the learned counsel for the respondent- State that a land encroachment case bearing Encroachment case no. 16 of 2008-09 was initiated and subsequently, the same had stood



concluded by passing of an order dated 02.01.2012, however, since the said order dated 02.01.2012 was not being implemented, the private respondent no. 7 had filed a writ petition bearing C.W.J.C. no. 24310 of 2013 which was disposed off by this Court vide order dated 23.06.2017 with liberty to the writ petitioner to file appropriate application before the concerned Circle Officer, who in turn was directed to implement the order dated 02.01.2012, passed in Encroachment case no. 16 of 2008-09, within a period of 06 weeks of filing of a representation by the writ petitioner of that case and after giving due opportunity of hearing to the affected persons, provided the said order dated 02.01.2012 has not been challenged or modified or quashed by any authority or court. Thereafter, the S.D.O., Narkatiyaganj, vide letter dated 31.12.2017, had directed for implementation of the order dated 02.01.2012, passed by the respondent no. 6, hence, the respondent no. 6 had issued notice to the encroachers to remove the encroachment by 19.04.2018 and had also demanded police force and deputation of a Magistrate vide letter dated 25.04.2018 to remove the encroachment, in pursuance whereof, police force and Magistrate were deputed for removal of the encroachment but in the meantime, an order of *status quo* was



passed in the present case, vide order dated 13.06.2018, hence, the further proceedings were stayed. It is also submitted that though the order dated 02.01.2012 passed under **Section 6(1) of the Bihar Public Land Encroachment Act, 1956 (herein after referred to as "the Act, 1956")** is an appealable order, nonetheless, no appeal has been filed by the petitioner till date, meaning thereby that the petitioner has got no grievance.

5. I have heard the learned counsel for the parties and perused the materials on record, from which, it is apparent that an exhaustive order dated 02.01.2012 has been passed by the respondent no. 6 in the aforesaid Encroachment case no. 16 of 2008-09, which reflects the fact that the husband of the petitioner had appeared and filed his show cause reply. Nonetheless, he did not appear subsequently, despite being reminded on several occasions about the date of hearing, however, the respondent no. 6 i.e. the Circle Officer, Narkatiyaganj came to a findings that the Anchal Amin had conducted a measurement, from which, it is apparent that the husband of the petitioner has made construction over the way (road) and therefore, had declared the encroachment made over the land in question to be unlawful and illegal, hence, has directed the encroachers to remove the encroachment. The only



issue raised by the learned Senior counsel for the petitioner is that the petitioner and her husband have purchased the land in question by a valid sale deed dated 04.02.1980 and merely on the basis of a report submitted by the Anchal Amin dated 05.05.2009, it is being alleged that the petitioner and her husband have encroached a part of the way/ public road, hence, it is submitted that the notice dated 03.04.2018, by which the respondent no. 6 has directed the husband of the petitioner to remove the encroachment in question, be quashed.

6. This Court finds that neither the petitioner has challenged the order dated 02.01.2012, passed by the Circle Officer, Narkatiyaganj in Encroachment case no. 16 of 2008-09, under ***Section 6(1) of the Act, 1956*** nor any appeal has been filed against the said order dated 02.01.2012, hence being not aggrieved by the said order dated 02.01.2012, by which the petitioner and her husband have been held to be encroachers over the public land in question, they are estopped and precluded from challenging the consequential notice dated 03.04.2018, issued by the respondent no. 6, directing them to remove the encroachment in question. Moreover, this Court finds that the learned Senior counsel for the petitioner has raised disputed questions of fact, which may, for their determination,



require oral or documentary evidence to be taken, hence such disputes cannot be considered appropriately in a writ petition by this Court under Article 226 of the Constitution of India and the remedy of the petitioner would lie elsewhere. Reference in this regard be had to the judgments rendered by the Hon'ble Apex Court in the case of *Smt. Gunwant Kaur & others v. Municipal Committee, Bhatinda and others*, reported in *1969 (3) SCC 769*, the one reported in *A.I.R. 1964 SC 1419*, in the case of *Thansingh Nathmal & others v. the Superintendent of Taxes, Dhubi and others* and the one reported in *(2020) 6 SCC 256*, in the case of *Punjab National Bank and others v. Atmanand Singh and others*.

7. Yet another aspect of the matter is that the petitioner has not taken recourse to the alternatives remedies available under the Act, 1956 and has instead approached this Court directly by filing the present writ petition, which is not maintainable. It is a well-settled law that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India and this Rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.



Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the case of *Seth Chand Ratan vs. Pandit Durga Prasad (D) By Lrs. & Others, reported in (2003) 5 SCC 399*, the one reported in *(1974) 2 SCC 706 (Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot & Others)*, the one reported in *(2008) 5 SCC 632 (Rajasthan SEB vs. Union of India & Ors.)* and the one rendered in the case of *Radha Krishan Industries vs. State of Himachal Pradesh & Ors., reported in (2021) 6 SCC 771*.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	30.08.2022
Uploading Date	07.09.2022
Transmission Date	NA

