

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.8604 of 2011

Krishnadeo Prasad & Anr .

Versus

The State Of Bihar & Ors .

5/

30.08..2011

Heard learned counsel for the parties.

The instant writ application is directed against the order dated 21.04.2011 issued by Circle Officer, Asthawan, Nalanda (Respondent no.4) in the name of petitioner no.2 in Land Encroachment Case no. 07/88-89 / 08/07-08, whereby the petitioner no.2 has been directed to remove encroachment over 0.01 decimal of land appertaining to Khesara no.7093, khata no.340, thana no.231 in village Mauza Kaila failing which the authorities would demolish the alleged encroachment.

The petitioners, who are brothers, submit that the impugned notice has been issued on the pretext of order of this Court dated 19.04.2011 passed in C.W.J.C. No.2260 of 2010. They challenge the order mainly on two grounds: Firstly; by order dated 19.04.2011, in no way indicate that the residential premises of the petitioners made on 0.1 decimal of land appertaining to Khesara no.7093, khata no.340, thana no.231 in village Mauza Kaila should be demolished. Secondly; an appeal in respect of same issue is pending before the learned Collector vide Appeal no.09 of 1989. The petitioners state that Land Encroachment case no.4 / 7 of 85-86 was started against the deponent on the premise that he is in unauthorized occupation of Gairmazarua land of 0.03 decimal appertaining to thana no.231, khata no.650, plot no.1493, tauzi no.7/260. The Circle Officer

called a report from Circle Inspector, Asthawan, who made inspection in November 1977 and reported that two rooms and a Varandah is existing on plot no.1493 since last 30 years on 0.3 decimals of land. The Circle Inspector further reported that petitioner no.2 held less than 5 acres of land. The proceeding was dropped on 14.11.1987.

Again some villagers made complaint to the District Magistrate, Nalanda, who gave verbal order for demolition. The Circle Officer, Asthawan, as such initiated a fresh encroachment proceeding being proceeding No.8/1988-89. The petitioners challenged the same in C.W.J.C. No.173 of 1988 filed on 30.11.1988. The writ application was disposed of on 24.02.1989 by a Division Bench granting liberty to the petitioner to file an appeal before the Collector. The petitioners, accordingly, filed appeal being appeal no.09 of 1989. The Collector, Nalanda directed the Deputy Collector, Land Reforms, Nalanda to conduct enquiry and submit a report vide order dated 09.05.1990 / 10.05.1990, a copy of the order of the learned Collector, Nalanda is annexed as Annexure-7 to this application. Learned counsel submits that Deputy Collector, Land Reforms did not submit any report.

It appears that again some complaints were filed by the villagers pursuant to which another Land Encroachment proceeding namely Land Encroachment case no.01/2003-04 was initiated. In the proceeding, it was alleged that the petitioners encroached 0.01 decimals of land of Khesara no.1490/7039 of

khata no. 343. The petitioner replied that plot no.1490 stands in amalgamation with plot no.1491 of deponent since last 35 years. The petitioners further submit that if a person does not hold more than 5 acres of land, the Collector can pass order for settlement, if the land is contiguous to agricultural land in view of Section 6(c) of Public Land Encroachment Act.

The State has filed counter affidavit. In paragraph 7 of the counter affidavit, it has been stated that petitioners encroached public land appertaining to khata no. 340, plot no.1490 / 7039, which is about 0.01 decimal. The petitioners had not responded to the earlier notices. In view of order passed in C.W.J.C. No. 8158 of 2011, the Circle officer, Asthawan examined the matter and found that the petitioners have encroached 0.01 decimal of public land.

I have heard the learned counsel for the petitioner and the State. It appears that a land Encroachment appeal no. 09 of 1989 is pending before the Collector, Nalanda. It is not the case of the State that the aforesaid appeal has been disposed of. As such, I dispose of the application with a direction to the Collector, Nalanda to dispose of the appeal preferably within a period of three months from the date of receipt of a copy of this order.

Till the disposal of appeal, no coercive steps would be taken against the petitioner in respect of demolition of construction on 0.01 decimal of land on Khesara no.7093, khata no.340, thana no.231 in village Mauza Kaila, P.S. Asthawan in

the district of Nalanda.

This application stands disposed of.

(Samarendra Pratap Singh, J.)

Uday/

