

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24522 of 2018

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Md. Muzaffar Alam, son of Late Hafij Kamaruddin, Resident of Village-Dhanawan, P.O.- Arthua, P.S.- Kasma Circle Rafiganj, District Aurangabad (Bihar).

... .. Petitioner,

Versus

1. The State of Bihar.
2. The District Magistrate, Aurangabad.
3. The Sub Divisional Officer, Aurangabad.
4. The Circle Officer Rafiganj Aurangabad.

... .. Respondents.

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Appearance :

For the Petitioner	:	Mr. Nagendra Kumar Singh, Advocate.
For the State	:	Mr. Rishi Raj Sinha, SC-15.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 29-02-2024

In the instant writ petition, the petitioner has prayed
for the following relief(s):

“(i) For the issuance of an appropriate writ, order, direction to quash the notice dated 27.8.2018 issued under section 6(2) of Bihar Public Land Encroachment Act 1956 in case No.18/17-18, by which and whereunder the Circle Officer, Rafiganj has directed the petitioner to remove the encroachment from the land pertaining to Thana No.735, Khata No.90, Plot



No.914, Area 1170 Sq. feet till
20.10.2018 Annexure-4.

- (ii) For the issuance of an appropriate writ in the nature of mandamus directing the respondents to get the land pertaining to Thana No.735, Khata No.90, Khesra/Plot No.914 and Khata No.4, Plot No.913 situated in village-Dhanawan Circle Rafiganj in presence of the petitioner and others.
- (iii) For further direction to the respondents to allow the petitioner to engage a private Amin when the date of measurement of the land in question is fixed and information to this effect be also given to the petitioner to be present at the P.O.
- (iv) For further direction to the respondents to keep the earlier measurements done in absence of the petitioner in abeyance till the out come of fresh measurement.
- (v). For any other relief or relief(s) for which the petitioner is found entitled in the facts and circumstances of the case.”

2. Perusal of the relief(s) sought in the present writ petition, it is evident that the petitioner has questioned the



validity of show cause notice. Against the show cause notice, Writ Court has no jurisdiction unless and until it is issued by an incompetent authority or it is in violation of any statutory Rules. The petitioner has not pointed out either of the aforementioned ground. Therefore, the petitioner has not made out a case so as to entertain the present writ petition. In other words, the present writ petition is pre-mature.

3. In support of the aforementioned reasons, we are relying on the Hon'ble Supreme Court decisions in the cases of **Union of India and Another Versus Kunisetty Satyanarayana** reported in (2006)12 Supreme Court Cases 28 and **Secretary, Ministry of Defence and others versus Prabhash Chandra Mirdha** reported in (2012) 11 Supreme Court Cases 565. In both the decisions, the Hon'ble Supreme Court has held that Writ Court has no jurisdiction insofar as entertaining a petition against show cause unless and until it is by an incompetent authority or in violation of any statutory Rules. Thus, the petitioner has not made out a case.

4. Accordingly, the present writ petition stands disposed of as pre-mature.

5. Disposal of the present writ petition would not be a hurdle for the petitioner to submit a detailed explanation to the



show cause notice dated 27.08.2018 within a period of 15 days from the date of receipt of this Judgment/Order. Thereafter, the concerned authority shall proceed in accordance with law and take a decision and communicate to the petitioner within a period of two months from the date of receipt of petitioner's explanation.

6. However, it is made clear that interim order operating in the present writ petition merges with the final order in view of the Hon'ble Supreme Court decision in the case of **Kalabharati Advertising Versus Hemant Vimalnath Narichania and others**, reported in (2010) 9 Supreme Court Cases 437. Accordingly, interim order dated 26.02.2019 stands ceased.

7. Recently, Hon'ble Supreme Court in the case of **HYDHA MUSLIM WELFARE MASJID-E HIDAYA AND MADARASA VERSUS N. DINAKARAN AND OTHERS** decided on 26.02.2024 in SLA (C) NO(S). 4375/2024 observed as under:

- “i. The petitioner is admittedly not the owner of the subject property;
- ii. The subject land, vests in Chennai Metropolitan Development Authority (for short 'CMDA'), free from all encumbrances;



- iii. The petitioner is an unauthorized occupant.
- iv. The petitioner never applied to sanction building plans;
- v. The construction was raised in a totally illegal manner;
- vi. The illegal construction, remained unabated despite notices being served by the CMDA Authorities on 09th December, 2020.”

The aforementioned ingredients are to be examined in a disputed illegal encroachments. In the present case also, the concerned authority is hereby directed to take note of the above ingredients while finalizing the matter.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.03.2024.
Transmission Date	NA

