

(2021) 02 PAT CK 0213

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12161 Of 2019

Birendra Prasad Singh

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Citation : (2021) 02 PAT CK 0213

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Narayan Singh, Subodh Kumar, Rishi Raj Sinha, Saurabh Kumar, Sanjeev Kumar Singh, Pramod Kumar Singh

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the Zila Parishad, Samastipur.

In the present case, the petitioner is challenging the Notice bearing Memo No. 432 dated 26.02.2019 issued by D.D.C.-cum-Chief Executive Officer,

Zila Parishad, Samastipur by which the petitioner has been directed to vacate the encroached land, but from the records, it appears that this letter was

not acted upon by the D.D.C., but the D.D.C. has addressed a letter dated 15.06.2019 to the Circle Officer, Jitwarpur, Samastipur wherein a request

was made that the encroachment of land of Zila Parishad should be removed, whereupon, encroachment proceeding was initiated in which notice was

given to the petitioner, but the petitioner has not participated in the proceeding and finally, the order dated 11.02.2020 for removal of encroachment has

been passed.

In the present case, the petitioner is not challenging the order of initiation of

encroachment proceeding passed by the Circle Officer, but he is challenging the notice issued by the DDC-cum-Chief Executive Officer, Zila Parishad, Samastipur which was never acted upon, but on his request a separate proceeding was initiated.

Counsel for the petitioner has placed reliance on the order of permanent injunction passed in T.S. No. 85 of 1976 by the Munsif 2nd, Smastipur

wherein the subject matter of consideration was Khesra No. 231 measuring 1 katha 13 dhurs appertaining to Khata No. 55, which was Gairmazaura

land of Tauzi No. 929 C and one Ram Dayal Sah was one of the co-sharer in the said Tauzi.

From the records, it appears that the impugned action, which should have been challenged in the present proceeding, has not been challenged in the

writ application, rather a notice issued by the D.D.C.-cum-Chief Executive Officer, Zila Parishad, Samastipur has been challenged, which was never

acted upon and that too it also appears that the petitioner after receiving the notice failed to participate in the encroachment proceeding initiated by the

Circle Officer and finally, it appears from the order dated 11.02.2020 that all the encroachments have been removed.

Counsel for the petitioner has placed reliance on the judgment reported in 2011 PLJR (4) 504, which is quite different from the facts of the present

case and does not apply in the present case and he can only claim his right over the property, which has been declared by the civil court in T.S. No. 85

of 1976.

During conversation with the counsel for the respondents, he has submitted that they have not removed the petitioner from the land, which has been

declared to exclusive right by an ex-parte order dated 11.02.2020, as the same was not challenged in any court of law, it has remained in force till

today. However, the petitioner, if so aggrieved, may challenge the order of Circle Officer before the appellate forum or he may file a suit for declaring

of title and recovery of possession as per the law.

With the aforesaid observations and directions, this writ application is dismissed.