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**(2020) 01 JH CK 0213**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (C) No.3605 Of 2015**

Jai Prakash Narain

APPELLANT

Vs

State Of JharkhandAnd Ors

RESPONDENT

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**Date of Decision :** 16-01-2020

**Acts Referred:**

Bihar Public Land Encroachment Act, 1956 — Section 6

**Citation :** (2020) 01 JH CK 0213

**Hon'ble Judges :** Sanjay Kumar Dwivedi, J

**Bench :** Single Bench

**Advocate :** Rashmi Kumari, Ashwini Bhusan

**Final Decision :** Allowed

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## Judgement

Heard Mrs. Rashmi Kumari, learned counsel appearing for the petitioner and Mr. Ashwini Bhusan, learned A.C to Sr. S.C-III appearing for the respondent-State.

The petitioner has preferred this writ petition for quashing the order dated 03.07.2013 passed by the respondent-Deputy Commissioner, Koderma in Encroachment Appeal No.18/2011 as contained in Annexure-9 to the writ petition whereby the appeal of the petitioner has been rejected.

Learned counsel for the petitioner submits that the prayer is also made for quashing the order dated 19.05.2011 passed by the respondent No.3-Land

Reforms Deputy Collector, Koderma directing to remove the encroachment over the area of 135.0â??X 5â??0â?? feet. She further submits that

the petitioner had purchased two plots of land from two different sale deeds as annexed as Annexure-1 and Annexure-1/1 to the writ petition dated

27.08.2004 which are in relation to the 289 & 238 sq. feet of Plot No.7451 Khata No.70, Ward No.7, Mouza Telaiya, under Thana No.244. She

further submits that the land in question is the raiyati land of C.H. Company Pvt. Limited. She further submits by way of referring Annexure-6 to the

supplementary affidavit i.e., copy of Khatiyani dated 25th July, 1966 which suggests that the said plot No.7451 in the name of C.H. Company Pvt. Ltd

having an area of 1.20 acres with the remarks for 'makanmaisahn'.

Learned counsel for the petitioner submits that notice under the Bihar Public Land Encroachment Act, did not convey that description of plots at all

but only referred to the area of encroached land as 135.0' X 5' ft. near Bhagwati Market comprising boundary wall and permanent

shop which is apparent from Annexure-7 issued by respondent-L.R.D.C., Koderma, on 19th May, 2011. She further submits that no order has been

passed in terms of the provisions of Bihar Land Encroachment Act, now (Jharkhand) on petitioner's objection before issuing the notice under

Section 6 of the said act. She further submits that the appellate authority in the impugned order as contained in Annexure-9 dated 03.07.2013 has also

failed to consider that the said land is Raiyati land purchased from two valid sale deeds from his vendor and recorded in khatiyani, as such, the

respondents did not take any measurement of the land in presence of the petitioner before the alleged encroachment has been proceeded against the

petitioner. She further submits that petitioner valuable right could be allowed to be disturbed in a summary proceeding like this.

Per contra, Mr. Ashwini Bhusan, learned counsel for the respondent-State submits that the authority concerned have examined the matter and after

looking into the documentary evidence has passed the impugned order and it is in accordance with law as there is no illegality in the impugned order.

Having heard learned counsel for the parties, this Court finds that in counter affidavit there is admission to the effect that the state filed Encroachment

Case in 2005 but the petitioner was not found encroacher of public land. It is also admitted in the counter affidavit that as per cadastral survey land in

dispute is portion of plot No.3448 under Khata No.144 for which new survey of plot in revisional survey of 1967 has been carved out which are plot

No.7451 and 7417 land of plot no.7441 comprises of an area measuring 1.20 acres out of which C.H. Company Pvt. Ltd., has sold 1505 sq. feet by

registered sale deed to the petitioner namely, Jai Prakash Narain and the petitioner is running sweets shop in the name and style of Kanhaiya

Confectioner. In view of the clear admission in the counter affidavit, it appears that the dispute in question cannot be decided in a summary proceeding

for eviction of the petitioner. In this regard, reference may be made to the Smt. Rekha Singh vs. State of Bihar as reported in 1992 (2) PLJR 85 4held

as under:-

“It has been well settled by now that the summary remedy for eviction under the Act can be resorted to by the Government only against

the persons who are in unauthorised occupation of any land which is the property of Government. If there is a bonafide dispute

regarding the title of the Government to any property, the Government cannot take unilateral decision in its own favour that the property

belongs to it, and, on the basis of such decision take recourse to the summary remedy provided for evicting the person who is in possession

of the property under a bona fide claim or title.”

In view of the above facts and considering the admission in the counter affidavit and well-settled principles of law and particularly finding that the

petitioner is in possession of the said land for the several decades and the said facts have been confirmed by the competent authority on the earlier

proceeding there appears to be a bonafide dispute of title between the petitioner and the respondent-State which cannot be adjudicated in the summary

proceeding under the Act of 1956.

Under the aforesaid facts and circumstance, the impugned order dated 03.07.2013 as contained in Annexure-9 is set-aside. However, the respondent-

State is at liberty to take appropriate recourse before the competent Civil Court for declaration of its title upon the said land.

Accordingly, the writ petition stands allowed and disposed of.