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**(1990) 11 PAT CK 0011**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1523 of 1983

Triveni Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 22-11-1990

**Acts Referred:**

Constitution of India, 1950 — Article 300A

Criminal Procedure Code, 1973 (CrPC) — Section 133

**Citation :** (1992) 1 PLJR 303

**Hon'ble Judges :** G.C. Bharuka, J

**Bench :** Single Bench

**Advocate :** Vindhya Keshri Kumar, Mithilesh Kumar Singh and Ranjan Sinha, for the Appellant; D.N. Yadav and C.M. Chaurasia, for the Respondent

**Final Decision :** Allowed

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## Judgement

G.C. Bharuka, J.—The present writ application has been filed by the Petitioner, inter alia, for issuance of writ of mandamus restraining the Respondents from disturbing the possession of the Petitioner over his house and other structures including boundary wall standing on S.P. No. 1900 in village Madhepura, P.S. Katara, District Muzaffarpur.

2. It has been stated by Mr. Vindhya Keshari Kumar, learned Counsel for the Petitioner that the Respondent authorities are trying to demolish the structures of the Petitioner without taking recourse to any statutory provision, including the provisions as contained in the Bihar Public Land Encroachment Act, 1956. His further submission is that in view of the law as laid down in the case of Niranjana Mandal and Another Vs. The State of Bihar and Others, the authorities are not empowered to take any steps under the provisions of the Act since the encroachment is found to be less than 5 links. He has also produced a certified copy of the order dated 8.6.1985 passed by the Executive Magistrate, Muzaffarpur in T.R. No. 190/88 (State v. Triveni Tiwari) in a proceeding which was initiated u/s 133 of the Code of Criminal Procedure. According to Mr. Kumar,

this proceeding was also with regard to the alleged encroachment in question and after hearing the contesting parties the learned Magistrate has exonerated the Petitioner from the allegation of encroachment. On all these grounds it is submitted that the Respondents be restrained from interfering with the possession of the Petitioner over the land in question.

3. Without delving deep into the matter suffice it is to state that in view of the constitutional mandate as envisaged under Article 300-A of the Constitution of India no person shall be deprived of his property save by authority of law. In this view of the matter even if in any given case it is found that there is any encroachment, the steps for removal of encroachment can be taken only in accordance with the provisions, as envisaged under law made by the competent legislature. For meeting the situation like the one at hand, the State Legislature has enacted the Land Encroachment Act. The authorities are not competent to take action except by following the mandatory provisions contained therein. The same having not been done in this case, it is fit and proper that the Respondents should be restrained from interfering with the properties of the Petitioner. Let a writ to this effect be issued accordingly.

4. So far as other contentions are concerned, if under the facts and the circumstances of the case, the authorities still feel like initiating any proceeding under the Act, they will take into consideration the other submissions, which have been made and noticed hereinbefore.

5. The writ application is accordingly at, owed to the extent indicated above. There will be no order as to cost.