

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (C) No.6071 of 2018**  
**With**  
**I.A. No.410 of 2019**

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1. Anjan Gope  
2. Chhotu Gope @ Chhutu Gope  
3. Chatak Gope ..... Petitioners.

-Versus-

1. The State of Jharkhand  
2. The Deputy Commissioner, East Singhbhum.  
3. Sub Divisional Officer, Jamshedpur. .... Respondents.

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**CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR**

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For the Petitioners : Mr. A. K. Das, Advocate  
For the State : A.C. to S.C. (L&C)-I

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**Order No.08**

**Date: 07.09.2021**

1. This case is taken up through video conferencing.
2. The present writ petition has been filed for issuance of direction upon the respondent authorities to show cause as to why and under what authority they have demolished the boundary wall erected over a piece of land, appertaining to Khata no.55, plot no.937, ward no.17, measuring an area of 0.25 hectare, under Jamshedpur Notified Area Committee without initiating any proceeding. Further prayer has been made for issuance of direction upon the respondents, restraining them from interfering with the possession of the petitioners over the aforesaid land. The petitioners have also prayed for issuance of direction upon the respondent authorities to pay them compensation for the damages caused due to demolition of the part of the boundary wall as also for causing harassment to them.
3. Mr. A. K. Das, learned counsel for the petitioners, submits that the family of the petitioners have been in peaceful possession over the land, appertaining to Khata no.55, plot no.937, ward no.17, measuring an area of 0.25 hectare, under Jamshedpur Notified Area Committee, District East Singhbhum. The possession of the petitioners' ancestor has been recorded in the original as well as revisional survey. The copy of the Khatiyani annexed as Annexure-1 to the writ petition suggests that an unauthorized occupation of the petitioners' father, namely, Sahdeo Gaud has been shown over the said land since 1986, which, as per the Khatiyani, was recorded in the name of Anabad Bihar Sarkar. In the year 1992, TISCO had filed an application under Section 83 of the Chotanagpur Tenancy Act, 1908 against the father of the

petitioners (since deceased), which was registered as Case no.106 of 1992-93, in the court of Assistant Settlement Officer, Jamshedpur. The aforesaid application was finally rejected vide order dated 5<sup>th</sup> October, 1993, a copy of which has been annexed as Annexure-2 to the writ petition. It is further submitted that suddenly on 18<sup>th</sup> November, 2018, the respondent authorities came over the said land with heavy earth movers and demolished the boundary wall of the petitioners, however, the house standing over the said land could not be demolished by the respondent authorities due to intervention of local residents. It is also submitted that the family members of the petitioners have been in possession of the said land for about hundred years and have thereby perfected their title over the same by way of adverse possession. The respondent authorities, therefore, cannot forcibly evict the petitioners from the said land without taking due recourse of law.

4. A counter affidavit has been filed on behalf of the respondents, stating, inter alia that as per the survey conducted in the year 1995, Khata no.55, plot no.937, ward no.17 under Jamshedpur Notified Area Committee, Jamshedpur has been found recorded in the name of Anabad Bihar Sarkar whereas TISCO has been shown as "Vasra No.1", and Sahadeo Gaud has been shown as illegal occupant, who is not the ancestor of the petitioners. Hence, the petitioners are in illegal possession of the said land. It has, however, been stated in the counter affidavit that there was no boundary wall over the said land and the respondents have never used any bulldozer to demolish any such structure erected over the same. The respondents have also no knowledge about the possession of the petitioners over the said land for about hundred years, as claimed by them in the writ petition.
5. So far as the averments made in the counter affidavit that so-called illegal occupant-Sahadeo Gaud is not the ancestor of the petitioners, Mr. A. K. Das, learned counsel for the petitioners, while referring to the cause title of the writ petition, submits that name of Late Sahadeo Gaud has been mentioned as the father of the petitioners. The petitioners have also stated in paragraph no.9 of the rejoinder affidavit that "Sahadeo Gaud" and "Sahadeo Gope" is the same person i.e. father of the petitioners, whose name has admittedly been recorded as unauthorized occupant in the Khatian with respect to the land in question since 1986. Even if the entry made in the said Khatian is

taken into consideration, admittedly the petitioners have been shown to be in occupation of the said land for the last 32 years till filing of the present writ petition.

6. Be that as it may. So far as the submission of the learned counsel for the petitioners that the respondents cannot interfere with the possession of the petitioners over the land in question without taking due recourse of law, I find substance in the same.
7. It is settled law that if the State authorities want to evict any person from a piece of land, the same is to be done in accordance with the procedure prescribed under law. In the case of ***Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Others, reported in (1997)11 SCC 121***, the Hon'ble Supreme Court has held as under:-

*"30. Encroachment of public property undoubtedly obstructs and upsets planned development, ecology and sanitation. Public property needs to be preserved and protected. It is but the duty of the State and local bodies to ensure the same. This would answer the second question. As regards the fourth question, it is to reiterate that judicial review is the basic structure of the Constitution. Every citizen has a fundamental right to redress the perceived legal injury through judicial process. The encroachers are no exceptions to that constitutional right to judicial redressal. The constitutional court, therefore, has a constitutional duty as sentinel on the qui vive to enforce the right of a citizen when he approaches the court for perceived legal injury, provided he establishes that he has a right to remedy. When an encroacher approaches the court, the court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief. In that behalf, it is the salutary duty of the State or the local bodies or any instrumentality to assist the court by placing necessary factual position and legal setting for adjudication and for granting/refusing relief appropriate to the situation. Therefore, the mere fact that the encroachers have approached the court would be no ground to dismiss their cases. The contention of the appellant-Corporation that the intervention of the court would give impetus to the encroachers to abuse the judicial process is untenable. As held earlier, if the appellant-Corporation or any local body or the State acts with vigilance and prevents encroachment immediately, the need to follow the procedure enshrined as an inbuilt fair procedure would be obviated. But if they allow the encroachers to remain in settled possession sufficiently for a long time, which would be a fact to be established in an appropriate case, necessarily suitable procedure would be required to be adopted to meet the fact-situation and that, therefore, it would be for the respondent concerned and also for the petitioner to establish the respective claims and it is for the court to consider as to what would be the appropriate procedure required to be adopted in the given facts and circumstances.*

In the case of ***G. Manikyamma & Others Vs. Roudri Cooperative Housing Society Limited & others, reported in (2014) 15 SCC 197***, the Hon'ble Supreme Court has held as under:-

*"33. The authority of the State to evict encroachers for the benefit of the members of the first respondent Society (whose right to possession of the property is not clearly established) by the use of*

*police force is wholly inconsistent with the rule of law. The mode of eviction of unauthorised occupants depends on the ownership of the property. In a country governed by the rule of law, even squatters can be evicted only in accordance with some procedure established by law. In the absence of any special statute dealing with the eviction of such squatters, persons seeking to evict squatters, must obtain a decree for eviction from a competent court and execute such a decree. Such a decree can be granted only if the competent court comes to the conclusion that the person seeking such a decree has a superior legal right to the possession of the property in dispute than the right of the squatter."*

8. Since the respondents in their counter affidavit have denied the allegation made by the petitioner in the writ petition that the boundary wall existing over the said land was demolished by them, no order with regard to the same is being passed by this court. It is, however, observed that since the petitioners/their ancestor have been in possession of the said land may be unauthorized, for several decades, if the respondents intend to evict them from the land in question, the same shall be done only after following due procedure prescribed under law.
9. The writ petition is, accordingly, disposed of with the aforesaid observation.
10. I.A. No.410 of 2019 is also disposed of.

*Sanjay/*

**(Rajesh Shankar, J.)**