

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C. W. J.C. No.....of 2021

In the matter of an application
Under Article 226 of the
Constitution of India.

And

In the matter of;

1. Atul Kumar, aged about 41 years, (Male), Son of Late Brajendra Kumar Singh, Resident of Atul Machinery, Purani Gurhatti, P.S.- Chapra Nagar, District-Saran.
2. Pandey Shailesh Kumar, aged about 72 years, (male), Son of Late Chandramauli Pandey, Resident of Lah Bazar, Salempur, P.S.- Chapra Nagar, District-Saran.
3. Shailesh Kumar, aged about 52 years, (Male), Son of Late Badrinarayan Gupta, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
4. Ranjit Bahadur Sinha, aged about 55 years, (Male), Son of Late Amrendra Bahadur Sinha, Resident of Lah Bazar, Salempur, P.S.- Chapra Nagar, District-Saran.

5. Prashant Raj, aged about 52 years, (Male), Son of Radha Vallabh Prasad, Resident of in front of Bank of India, Nirman Traders, Salempur, P.S.- Chapra Nagar, District-Saran.
6. Vivek Kumar, aged about 39 years, (male), Son of Sri Kumar Mishra, Resident of Mishra Homeo Stores, Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
7. Diwakar Gupta, aged about 64 years, (Male), Son of Late Gopaljee Prasad, Resident of Gopal Ji House, Purani Gurhatti, P.S.- Chapra Nagar, District-Saran.
8. Brijkishore Prasad, aged about 57 years, (Male), Son of Rameshwar Baitha, Resident of Saran Drycleaners, Mauna, P.S.- Chapra Nagar, District-Saran.
9. Ashwini Kumar, aged about 77 years, (Male), Son of Late Hanuman Prasad, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
10. Malti Gupta, aged about 69 years, (Female), Wife of Ashwini Kumar, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
11. Ashok Kumar Gupta, aged about 60 years, (Male), Son of Late Kanhaiya Lal Gupta, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.

12. Md. Nizamuddin, aged about 50 years, (Male), Son of Jalil Ahmed, Resident of Kabristan Road, Karim Chowk, P.S.- Chapra Nagar, District-Saran.
13. Narendra Singh, aged about 58 years, (Male), Son of Late Ram Sarek Singh, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
14. Dilip Kumar Gupta, aged about 42 years, (Male), Son of Om Prakash Gupta, Resident of Mauna Chowk, P.S.- Chapra Nagar, District-Saran.
15. Chandan Kumar, aged about 40 years, (Male), Son of Ravindra Nath Singh, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
16. Dharm Nath Gupta, aged about 42 years, (Male), Son of Bhagwanji Prasad, Resident of Aluminium House, Salempur, P.S.- Chapra Nagar, District-Saran.
17. Amit Vijay, aged about 42 years, (male), Son of Late Krishna Kumar, Resident of Shail Bhawan, Near Khadi Bhandar, Salempur, P.S.- Chapra Nagar, District-Saran.
18. Nawal Kishore Prasad, aged about 68 years, (Male), Son of Late Adaya Prasad, Resident of In front of Late Mahendra Babu House, P.S.- Chapra Nagar, District-Saran.

19. Deepak Kumar, aged about 35 years, (Male), Son of Raghuwar Dawal Sharma, Resident of Daldali Bazar, P.S.- Chapra Nagar, District-Saran.
20. Satyanarayan Sharma, aged about 74 years, (Male), Son of Late Maha Dev Maharaj, Resident of Mauna Chowk, P.S.- Chapra Nagar, District-Saran.
21. Abhishek Kumar, aged about 51 years, (Male), Son of Rameshwar Prasad Singh, Resident of Srinandan Road, Salempur, P.S.- Chapra Nagar, District-Saran.
22. Sri Prakash Gupta, aged about 29 years, (Male), Son of Late Akshaywar Prasad Gupta, Resident of Misri Dukan, P.S.- Chapra Nagar, District-Saran.
23. Manish Kumar, aged about 38 years, (Male), Son of Late Mohan Prasad, Resident of Sahebganj, P.S.- Chapra Nagar, District-Saran.
24. Manoj Kumar Gupta, aged about 43 years, (Male), Son of Om Prakash Gupta, Resident of Mauna Chowk, P.S.- Chapra Nagar, District-Saran.
25. Santosh Kumar, aged about 40 years, (Male), Son of Girja Prasad, Resident of Sahebganj, P.S.- Chapra Nagar, District-Saran.

26. Sanjay Kumar, aged about 42 years, (Male), Son of Late Ram Prasad Agrawal, Resident of Purani Gurhatti, P.S.- Chapra Nagar, District-Saran.
27. Devendra Kumar Singh, aged about 65 years, (Male), Son of Late Sudama Singh, Resident of Purani Gurhatti, P.S.- Chapra Nagar, District-Saran.
28. Prem Nath Prasad, aged about 62 years, (Male), Son of Late Prithvi Chand, Resident of Saran Watch, Salempur, P.S.- Chapra Nagar, District-Saran.
29. Ravi Shankar Kumar, aged about 43 years, (Male), Son of Late Lalji Prasad, Resident of Milan Hotel, Lah Bazar, P.S.- Chapra Nagar, District-Saran.
30. Nikhilesh Kumar, aged about 53 years, (Male), Son of Laxmi Prasad, Resident of Mauna Chowk, P.S.- Chapra Nagar, District-Saran.
31. Jitendra Kumar, aged about 32 years, (Male), Son of Ganesh Prasad, Resident of Mauna Phatak, Mahavir Mandir, P.S.- Chapra Nagar, District-Saran.
32. Chandan Kumar, aged about 33 years, (Male), Son of Prabhunath Prasad, Resident of Lah Bazar, P.S.- Chapra Nagar, District-Saran.

33. Birendra Kumar, aged about 59 years, (Male), Son of Radhe Shyam Prasad, Resident of Lah Bazar, P.S.- Chapra Nagar, District-Saran.

..... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Bihar, Patna.
3. The Collector, Saran at Chapra.
4. The Additional Collector, Saran at Chapra.
5. The Circle Officer, Sadar Chapra in the District of Saran.
6. The Senior Project Engineer, Bihar Raj Pool Nirman Nigam Limited, Work Division, Chapra.
7. The Executive Officer, Chapra Municipal Corporation.

.....Respondents

To,

The Hon'ble Mr. Justice Sanjay Karol, the Chief Justice of the High Court of Judicature at Patna and its companion Justices of said Hon'ble Court.

The humble petition on behalf of the petitioners above named.

Most respectfully Sheweth:-

1. That in this writ application the petitioners above named pray for issuance of an appropriate writ/order/direction for the following relief:-
 - a. Respondent authorities particularly respondent District Magistrate, Saran at Chapra and his Sub Ordinate be restrained from forcibly dispossessing the petitioners and demolishing their houses and commercial establishments without taking recourse to due process of law.
 - b. Respondents be restrained from interfering in peaceful possession of the petitioners of their buildings and shops until such time, the issue of their right to possess, is adjudicated in accordance with law.
 - c. For a direction to hold that there cannot be any presumption in law that the land on which petitioners building exist does not belong to them and is a public land over which respondents can act in any manner they desire.
 - d. For quashing communication contained in Memo No. 1058 dated 14.07.2018 addressed to the Circle Officer of the District of Saran directing that **Topo Land** is presumed to be

government land and accordingly, no mutation, creation of holding and land holding certificate be issued.

- e. For quashing the communication contained in Memo No. 269 dated 28.01.2021 issued by the District Magistrate, Saran addressed to Senior Project Engineer, Bihar Raj Pool Nirman Nigam Limited, Work Division, Chapra directing that land situated between Gandhi Chowk to Municipality Chowk is unsurveyed land and hence only cost of demolition to be paid for which necessary proposal be submitted and the amounts shall be paid ex-gratia.
- f. For any other relief for which the petitioners may be entitled to.

Copies of Memo No. 1058 dated 14.07.2018 and Memo No. 269 dated 28.01.2021 are annexed hereto and marked as **Annexure-1 & 2 respectively** to this writ application.

- 2. That the petitioners are citizen of India. The dispute in the present writ application appertains to parcel of land situated within the

town and Municipal Corporation of Saran, Chapra. The lis is, therefore, lies within the territorial jurisdiction of this Hon'ble High Court.

3. That the following substantial question of law arises for adjudication in the present writ application.
 - I. Whether the petitioners who are in possession of land over which they have constructed dwelling house/commercial establishments and are continuing in peaceful possession themselves in the present and their ancestors/vendors since time immemorial can be forcibly evicted on a presumption drawn by respondent authorities?
 - II. Whether absence of survey of land leads to a presumption that the same is government land and hence the petitioners have no right, title or interest and they can be forcibly evicted and their houses can be demolished?
 - III. Whether petitioners who have valid right over the land in question and are in peaceful possession for last more than 100 years can be considered to be in unauthorized possession and respondents can evict them by use of force without resorting to due process of law?

- IV. Whether action of the respondent authorities in treating the petitioners as unauthorized occupant on a presumption unsupported by any law is sustainable in the eyes law?
4. That the petitioners have not earlier moved this Hon'ble Court for relief prayed for in the present writ application.
 5. That facts giving rise to the present writ application in brief is that the government proposes to construct a double decor fly over within town and municipal corporation of Chapra for which necessary steps are being taken by respondent authorities. The proposed flyover is passing through busiest residential and commercial locality of Chapra town. The alignment of the flyover which has been demarcated by respondent authorities is likely to adversely affect more than 300 residents who are either having their dwelling house and or commercial establishments in existence since time immemorial.
 6. That the petitioners recently learnt from various news articles that respondents propose to demolish more than 300 houses/commercial establishments to facilitate construction of the flyover. The petitioners were aghast to learn that while doing so, respondents have drawn a presumption that since the land in

question is not surveyed and, therefore, it has to be presumed to be government land.

7. That, petitioners naturally are deeply worried and anguished over the attitude of respondent authorities and thus apart from trying to persuade respondents particularly D.M and A.D.M. for reconsideration, they have endeavoured to find out truth behind what the petitioners have learnt.
8. That the petitioners, on inquiry found their apprehension to be true. Petitioners were further taken aback when they approached D.M., Saran and they were brutally told that they will be forcibly evicted and only the cost of demolition of the structure will be paid as ex-gratia in the event they voluntarily remove the same or else even the cost of demolition will be realised from them. The petitioners manage to avail two communications, one written by D.M., Saran and the other by A.D.M addressed to the Circle Officer which are impugned in the present writ application which makes it evident that they have drawn a presumption only on the basis that the land is not surveyed and hence it is the government land.
9. That as stated earlier, the petitioners have right over the land and are in possession of the same. In some cases for more than 100 years either themselves or through their predecessors in interest.

For the sake of convenience of this Hon'ble Court petitioners has compiled the detail description of land, period of their possession, detail of mutation, creation of Zamabandi, payment of rent etc., in a separate chart which is being enclosed herewith.

Photocopy of Chart showing the detail description of land, period of their possession, detail of mutation, creation of Zamabandi, payment of rent etc., of all petitioners is annexed hereto and marked as **Annexure-3** to this writ application.

10. That on perusal of the information furnished in the chart enclosed in the Annexure-3 to the writ application, it would be manifest that the petitioners are in possession of the land/building and commercial establishment which are being shown in brief:-

Sl. No. Of Writ Petitioners	Holding No.	Circle No.	Deed Year	Jamabandi	Old Receipt	New Receipt
1.	32, 33B, 34, 52, 53B	14	1933, 1982, 1995, 2004 & 2016	Yes	1995, 1996 & 1998	2019
2.	494	13	1931	Yes	1985	2020
3.	53	14	1976		1989	2010

4.	493	13	1931	Yes	1984	2020
5.	23A, 23	14	1936		1994	2018
6.	12	13	1960		1967	2020
7.	214, 243	14	1933, 1954	Yes	1991	2021
8.	51	14	1948		2014	2020
9.	486	13	1994		1951	2020
10.	486	13	1994		1951	2020
11.	53C	14	1977		1989	2010
12.	50	14	1918		1998	2020
13.	41	14	1933			2018
14.	470	13	1968		2002	2019
15.	481	13		Yes	1976	
16.	31	14	2012		2013	2020
17.	1A	14	1986		2016	2020
18.	493B	13	2011			2020
19.	235A	7	1957		1997	2020
20.	207	14	1973	Yes	1966	2020
21.	13	13, 13A	1964			2019
22.	200	14	1928		2003	2020
23.	466	13	1941	Yes	1981	2020
24.	473	13	1980		2000	2020
25.	26	14	2005		1991	2018
26.	477A	13	1977		2005	2018
27.	33A	14	1982			2018
28.	153 (22)	14	1931	Yes	2011	2019

29.	349D	13	2008		2011	2014
30.	170	9	2001		2014	2020
31.	68	12	1944		1979	2021
32.	482A/1	13	2017		2017	2020
33.	465B/A	13	1960		1995	2020

11. That the documents in support of the information furnished in Annexure-3 to the writ application is voluminous and as the petitioners have to hurry up because of imminent threat, therefore, they crave leave of this Hon'ble Court to bring the same by filing supplementary affidavit to support the contention.

12. That the petitioners possession cannot be classified as unauthorized only on ipsi-dixit of one or two officials of the government. The petitioners are reminded of, what the Apex Court has to say in the case of **Bidi Supply Co. Vs. Union of India, reported in AIR 1956 SC 479** approving the approach of Lord Atkin " With the elegance so natural to him, Lord Denning in his Hamlyn Lectures (First Series) captioned as "Freedom under the Law" delivered in 1949, made the following prophetic observations:-

"All power corrupts. Total power corrupts absolutely.

And the trouble about it is that an official who is the possessor of

power often does not realise when he is abusing it. Its influence is so insidious that he may believe that he is acting for the public good when, in truth, all he is doing is to assert his own brief authority. The Jack-in-office never realises that he is being a little tyrant

And those observations admittedly fit in with the situation here“.

13. That, citizens of the country are primarily governed by hallowed principles underlining their rights and duties as enshrined by our founding fathers in the Constitution of India. All laws enacted by parliament or by State Legislature are subservient to the principles embodied in our sacred document. Everybody howsoever high or low position, he may occupy is bound by set of laws validly made. Article 300A prohibits the citizens to be deprived of property save by authority of law. It lays down that “no person shall be deprived of his property save by authority of law”. The Apex Court has time and again examined the rights qua authority vested in the state and its representatives to find out extent of power that can be exercised for depriving citizen of his property.

The principle propounded by the Hon’ble Supreme Court in the case of Meghamala and Ors. Vs. G Narasimha Reddy and Ors., reported in 2010 (8) SCC 383, paragraph 46, 47 & 48 is extracted

here-in-below to remind the respondents that they cannot be permitted to behave like a tyrant Mughal invader. They are bound by the same set of law which binds the petitioners. Respondents do not possess an extraordinary authority to travel beyond the realm of scheme of adjudication and usurp unto themselves something which is not devised to be within their domain. Paragraph No. 46 to 48 of the judgment referred to above are being reproduced here-in-below:-

“46. Even a trespasser cannot be evicted forcibly. Thus, a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law. (Vide Midnapur Zamindari Co. Ltd. V. Naresh Narayan Roy, Lallu Yeshwant Singh v. Rao Jagdish Singh, Ram Ratan v. State of U.P., Express Newspapers (P) Ltd. V. Union of India and Krishna Ram Mahale V. Shobha Venkat Rao).

47. In Nagar Palika, Jind v. Jagat Singh this Court observed that Section 6 of the Specific Relief Act, 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

48. Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto

themselves. It would be in violation of the rule of law. The government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide Bishan Das V. State of Punjab, Express Newspapers (P) Ltd., State of U.P. V. Dharmander Prasad Singh and State of W.B. V. Vishnunarayan & Associates (P) Ltd.)”.

14. That ancestors of the petitioners and petitioners in lineage are in possession of land for not decades but centuries and have constructed their dwelling house/commercial establishment. Respondent authorities presumption that since the land in question is not surveyed and hence government land is nothing but ridiculous. They do not have even basic concept of laws which regulate right of the parties. Unfortunately these days, the executive claiming to be sole repository of absolute power, do not even have the basics of laws which regulate right of a citizens property which he or she may hold. They seem to be oblivious of the legal dictum that even a trespasser has certain rights which must undergo adjudicatory process under the due process of law and then only even a trespasser can be evicted. In case of petitioners, they are in possession of the land bonafidely and genuinely by virtue of valid documents. This Court may appreciate

the level of competence of respondents that they are not even aware that entry in survey neither creates title nor extinguishes it.

15. That at this stage itself it may be useful to point out that in the map which was prepared in the year 1898-99 the land in question is clearly demarcated and shown. In subsequent surveys for reasons unknown to these petitioners it was not surveyed. Merely because land has not been surveyed, cannot be a ground to draw a presumption adverse to the interest of the citizens. Large tract of land in the District of Khagaria is un-surveyed and in common parlance it has been described as "*Pharakiya*" meaning excluded from survey. The petitioners are entitled to ask respondents whether thousands and thousands of citizens who are in possession of land described as "*Pharakiya*" in the District of Khagaria can be presumed to be unauthorized occupants.
16. That the dispute in the present writ application unfortunately has been raised for the first time in last more than 200 years. Petitioners are not opposed to any government scheme which is in public interest and for the common good of the citizens, however, while they may not oppose any work in larger public interest, they have a right conferred by the Constitution of India to protect their property from being snatched away by the tyrant executives.

17. That in the complex nature of dispute being raised by respondent authorities they are hardly equipped and can be considered as competent authority to undertake the adjudicatory process. The issue raises vexed question of right, title and possession based on facts and law. In scheme of things as guided by laws of the country, the District Magistrate neither has acumen, training nor competence to unilaterally decide the rights. The petitioners, having approached the District Magistrate, Saran and having heard his views are apprehensive that they will be forcibly evicted depriving them of even the basics civility of adjudication of their rights. The action of the respondent authorities is an apt example of power corrupts, total power corrupts absolutely. The respondent officials do not realise that while exercising the power, they are abusing it. They are so blind folded that pertaining to act for the public good when, in truth, the jack-in-office is acting as a tyrant.
18. That after coming to know about such decision of the District Authorities, the petitioners as well as other affected persons have filed their representation before the Collector, Saran on 06.02.2021 for reconsidering the decision. However, till date no decision has been taken at the level of the respondent Collector, Saran for the reason best known to him.

A copy of representation dated 06.02.2021 is being annexed herewith and marked as **Annexure-4** to this writ application.

19. That in view of the facts and circumstances as stated above and in the light of judicial pronouncement made by the Hon'ble Supreme Court on the issue raised in the writ petition, the action of respondent authorities is wholly arbitrary, unreasonable and illegal. Thus, the orders impugned contained in Annexure-1 & 2 are fit to be set aside.
20. That the petitioners have no other alternative, efficacious and speedy remedy than to invoke the jurisdiction of this Hon'ble Court for interjecting the proceeding based on ipxi-dixit of one officer.

It is, therefore, prayed that your Lordships may graciously be pleased to hear the petitioner issue rule NISI calling upon the respondents to show their cause as to why the relief prayed for in paragraph 1 of the writ application be not allowed and on return of the same make the rule absolute.

And/Or

Pass such other order or orders as your lordships may deem fit and proper.

And

During pendency of the writ application the respondent authorities be restrained from taking coercive steps against the petitioners for demolition of their houses/shops.

And for this the petitioners shall ever pray.

AFFIDAVIT

I, Atul Kumar, aged about 41 years, (Male), Son of Late Brajendra Kumar Singh, Resident of Atul Machinery, Purani Gurhatti, P.S.- Chapra Nagar, District-Saran, do hereby solemnly affirm and state follows:-

1. That I am Petitioner No. 1 in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have read the contents of the present writ application and fully understood the same.

3. That the statement made in paragraphs nos. are true to my knowledge and the those statement made in paragraphs nos. are based on the information derived from the relevant records of the case and rest are by way of submission to this Hon'ble Court.
4. That the annexures are the true/ photo copies of their respective originals

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2021

Atul Kumar & Ors.

_____Petitioners

- Versus -

The State of Bihar & Ors.

----- Respondents

Subject: Demolition

I N D E X

S.No.	Particulars	Pages
1.	Petition with Affidavit	1-22A
2.	Annexure-1 & 2: Copies of Memo No. 1058 dated 14.07.2018 and Memo No. 269 dated 28.01.2021.	
3.	Annexure-3: Photocopy of Chart showing the detail description of land, period of their possession, detail of mutation, creation of Zamabandi, payment of rent etc., of all petitioners.	
4.	Annexure-4: A copy of representation dated 06.02.2021.	
5.	Vakalatnama	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2021

Atul Kumar & Ors.

_____Petitioners

- Versus -

The State of Bihar & Ors.

----- Respondents

SYNOPSIS

In this writ application the petitioners above named pray for issuance of an appropriate writ/order/direction for the following relief:-

Respondent authorities particularly respondent District Magistrate, Saran at Chapra and his Sub Ordinate be restrained from forcibly dispossessing the petitioners and demolishing their houses and commercial establishments without taking recourse to due process of law.

Respondents be restrained from interfering in peaceful possession of the petitioners of their buildings and shops until such time, the issue of their right to possess, is adjudicated in accordance with law.

For a direction to hold that there cannot be any presumption in law that the land on which petitioners building exist does not belong to them and is a public land over which respondents can act in any manner they desire.

For quashing communication contained in Memo No. 1058 dated 14.07.2018 addressed to the Circle Officer of the District of Saran directing that **Topo Land** is presumed to be government land and accordingly, no mutation, creation of holding and land holding certificate be issued.

For quashing the communication contained in Memo No. 269 dated 28.01.2021 issued by the District Magistrate, Saran addressed to Senior Project Engineer, Bihar Raj Pool Nirman Nigam Limited, Work Division, Chapra directing that land situated between Gandhi Chowk to Municipality Chowk is un-surveyed land and hence only cost of demolition to be paid for which necessary proposal be submitted and the amounts shall be paid ex-gracia.

For any other relief for which the petitioners may be entitled to.

Dates	Events
	The petitioners have right over the land and are in possession of the same. In some cases, for more than 100 years either themselves or through their predecessors in interest.
	Their possession, mutation, creation of Jamabandi and payment of up to date rent receipt etc., clearly show that the petitioners have been in peaceful possession over the land/residential building and commercial complexes since long.
14.07.2018	The Additional Collector, Saran at Chapra vide Memo No. 1058 addressed to all the Circle Officer of Saran District, has directed that the Topo Land is presumed to be the government land and, therefore, no mutation, creation of holding and land holding certificate be issued.
28.01.2021	The D.M., Saran, Chapra vide Memo No. 269 has directed the Senior Project Engineer, Bihar Raj Pool Nirman Nigam Ltd., Work Division, Chapra that the land situated between Gandhi Chowk to Municipality Chowk is unsurveyed land and hence only cost of demolition to be paid for which necessary proposal be submitted and the amounts shall be paid as ex-gratia.
06.02.2021	Immediately, after coming to know, several affected persons including the petitioners made a joint

	representation before the Collector, Saran for reconsideration of the decision but no heed has been paid to the request made by the petitioners and others.
	Hence, this writ application.