

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1220 of 2015

In
Civil Writ Jurisdiction Case No. 20362 of 2012

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1. Phool Devi Wife of Mahesh Chandra Jha,
2. Mahesh Chandra Jha, Son of Late Kamlanand Jha,
3. Gunanand Jha, Son of Late Anandi Jha, All resident of Raghunathpur,
P.O. - Kachahari Balua, P.S. - Sarsi, District - Purnea.

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar,
Patna.
2. The Commissioner, Purnea Division, Purnea.
3. The District Magistrate, Purnea, District - Purnea.
4. The Sub-Divisional Officer, Banmankhi, District - Purnea.
5. The Block Development Officer, P.S. Sarsi, District - Purnea.
6. The Circle Officer, Banmankhi, P.S. - Banmankhi, District - Purnea.
7. Bambam Jha, Son of Sri Heera Jha, resident of village - Raghunathpur,
P.O. - Kachahari Balua, P.S. - Sarsi, District - Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar Jha
For the Respondent/s : Mr. Anjani Kumar- Aag6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 10-07-2015 The excessive vigilance on the part of 7th respondent by name Bambam Jha, has kept not only this Court but also the administration of the Circle of Banmankhi, District-Purnea, busy for several weeks. He approached this Court by filing C.W.J.C.No. 20362 of 2012 stating that the road on Plot no. 1285 appertaining to Khata No. 637 of village Raghunathpur has been encroached by various persons named in the writ petition including respondent



no.8 i.e., husband of appellant no.2 herein. Though the writ petition was in the form of public interest litigation, it was listed before a learned single Judge. It was disposed of on 1-11-2012 directing the Circle Officer i.e., the 6th respondent herein to initiate proceeding for removal of encroachment from the road passing through the land on Plot no. 1283 in Khata No. 637 of village Raghunathpur, within three months of the receipt of the order. It was directed that (1) it shall be open to 7th respondent to file representation to enable the Circle Officer to initiate proceeding; and (2) on receipt of the representation the 6th respondent shall pass orders, in the proceedings for removal of encroachment within three months.

2. Alleging the 6th respondent did not comply with the order of this Court, the 7th respondent filed a contempt case in M.J.C. no. 4475 of 2014. Series of directions were issued including the one, calling for report after report. On 24-6-2015 the learned single Judge passed the order directing that the encroachment shown in the report dated 20th June, 2015 shall be removed by 4-7-2015 and compliance be reported.

3. The appellants filed this appeal against the said order. The grievance of the appellants is that though a detailed survey was conducted on 13-5-2015 and list containing list of

encroachers which included 7th respondent also was prepared, the same was not taken into account and another report was called. It is also pleaded that the appellants did not encroach at all, and the small portion that has been found to have been encroached has since been handed over, and it is the 7th respondent who is continuing with the encroachment.

4. Heard Mr. Ganpati Trivedi, Senior counsel for the appellants and Mr. Anjani Kumar, learned Additional Advocate General-6 for the State and Mr. Subodh Kumar, learned counsel for respondent no.7.

5. Left to himself, the 7th respondent did not claim any right in respect of any piece of land, nor did he complain encroachment of his land by private individuals. His effort was only to get the encroachment cleared. Therefore, the writ petition partakes of the character of public interest litigation. For one reason or the other, it was placed before the learned single Judge, though it ought to have been heard by a Division Bench. Be that as it may, the orders passed therein are in the form of directions to the Circle Officer to pass proper order, which, obviously are required to be in conformity with the Bihar Public Land Encroachment Act. No specific adjudication was undertaken, much less a finding was recorded to the effect that any of the



private respondents, including the appellants herein have encroached any public land. The contempt case in the writ petition, at the most, can be to compel the 6th respondent to pass order under the relevant provision of the Public Land Encroachment Act, and beyond that the 7th respondent cannot insist that any particular person must be evicted. The reasons are two fold. First is that the affected party must be at liberty to work out the remedies under the Act itself, if any adverse order is passed. Secondly, the specific direction for removal of a particular individual would run beyond the scope of order in the writ petition.

6. The record discloses that someone visited the place and passed orders. If they are referable to any provision of law, the affected parties are to pursue their remedies. This Court is not the agency to execute the orders passed by the Circle Officer through the writ petition and contempt proceedings. If any orders have been passed under section 6 of the Public Land Encroachment Act by the Circle Officer, they need to be enforced in accordance with law, unless the affected parties have availed the remedy by filing revision before the concerned authority. If, on the other hand, no specific order, referable to the provisions of the Public Land Encroachment Act has been passed by the 6th

respondent, it was required to be passed within four weeks from today after issuing notice to the affected parties, and if any adverse order against the private individuals is passed, it shall be open to them to work out the remedy in accordance with law. Either way the order under appeal can not be sustained.

7. Hence the appeal is allowed and the order under appeal is set aside. In view of the facts mentioned above, we terminate the proceedings in M.J.C.No. 4475 of 2014 and the same shall stand closed.

8. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

BK.Roy/-

(Sudhir Singh, J)

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