

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.401 of 2014

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1. Chandiya Gwalin Wife of Late Deo Chand Gope Resident of Village -
Kusha Bija, P.S. - Dobhi, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Gaya
3. Divisional Forest Officer, Gaya Forest Division, Gaya
4. Sub-Divisional Magistrate, Sherghati, District - Gaya
5. Anchal Adhikari, Dobhi, District - Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.

For the Respondent/s : Mr. Prabhat Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 19-03-2015 Heard Mr. Jitendra Prasad Singh learned counsel learned
counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the notice dated 6.12.2013 issued by the Circle Officer, Dobhi, in the District of Gaya in purported exercise of power as a Collector under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') whereby he has directed the petitioner to remove the encroachment from the plot bearing Khata No. 436, Khesra Nos. 1073, 1074 and 1075 admeasuring 4.54 acres in village Piparghatti in the District of Gaya and copy of such order is placed at Annexure-6 to the writ petition. The notice was renewed by the Circle Officer again on 23.1.2014 and whereby the petitioner was

again cautioned to remove the encroachments by 29.1.2014 failing which it would be removed. This notice is placed at Annexure-7 of the supplementary affidavit.

It is case of the petitioner that following the two notices and even when a representation was filed before the Circle Officer he has proceeded to remove the alleged encroachment from a portion of the land causing damages to the property of the petitioner and being aggrieved he has represented before the District Magistrate, Gaya vide Annexure-9 to the writ petition.

Mr. Singh learned counsel for the petitioner while supporting his case has submitted that the land in question was obtained by the petitioner way back in 1954-55 by way of settlement from the ex landlord and since it was incorrectly mentioned in the survey records that he filed a suit under Section 106 of the Bihar Tenancy Act which was numbered as Suit No. 4244 of 1979. It is the case of the petitioner that the suit was decreed in favour of the petitioner vide judgment and order dated 19.12.1986 and which decree continues to hold field in as much as the State never appealed against the same and thus it has attained finality.

Learned counsel questioning the initiation of proceedings in the backdrop noted hereinabove submits that the notices issued by

the Collector are patently illegal and unsustainable in view of the circumstances discussed above and the petitioner being harassed at the hands of the State authorities has also filed a title suit bearing Title Suit No. 501 of 2008 for declaration of his right, title and possession over the lands in question.

Mr. Singh learned counsel while admitting to the position that the suit got dismissed for default on 4.9.2013 submits that a miscellaneous application for restoration is pending.

A counter affidavit has been filed on behalf of the State contesting the right of the petitioner over the land on grounds that it belongs to the Forest Department and while making such submission the Divisional Forest Officer, Gaya has ventured to opine that the decree passed in Suit No. 4294 of 1979 is a forged document. This Court is at a complete loss to appreciate the statement of the Divisional Forest Officer who has not the least understanding of a lawful procedure and his statement borders on contempt. Even when the decree passed under Section 106 of the Bihar Tenancy Act continues to hold field he has ventured to term it as a 'forged document'. The Divisional Forest Officer is cautioned to be careful while recording his opinion on a Court order.

The fact remains that the decree passed under Section 106

of the Bihar Tenancy Act continues to govern the field and there is nothing on record to dispute the continuity of the petitioner over the plots in question since last more than 50 years. That a Title Suit remains pending for final adjudication on the issue where the State would have all opportunity to contest the position, I am of the firm opinion that in the circumstances discussed above, the Encroachment Case No. 6 of 2013-14 is an abuse of the statutory powers and cannot be allowed to proceed.

For the conclusions drawn by me hereinabove, the entire proceedings arising from Encroachment Case No. 6 of 2013-14 pending before the Circle Officer, Dobhi, District Gaya is quashed and set aside.

Since the petitioner complains of damage to his private property at the hands of the Circle Officer and the issue of title remains pending before the Civil Court for final adjudication in Title Suit No. 501 of 2008, he shall be at liberty to pray for appropriate relief before the Court below.

The writ petition is allowed.

(Jyoti Saran, J)

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