

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4835 of 2006

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Raj Birendra Mishra son of Ramakant Mishra, resident of village &
P.O.Nechuakhas, P.S.Kuchaicot, District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Gopalganj
3. The Superintendent of Police, Gopalganj, District Gopalganj
4. Circle Officer, Kuchaicot Anchal, District Gopalganj
5. Shri Jay Prakash Narayan, present posted as the Circle Officer,
Kuchaicot, District Gopalganj
6. Officer-In-charge, Kuchaicot, Police Station Kuchaicot, District
Gopalganj

Respondent Ist Party

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7. Munna Prasad son of Late Gopal Prasad
 8. Krishna Prasad son of Late Gopal Prasad
 9. Om Prakash Prasad son of Late Gopal Prasad
- All residents of village Nechuakhas, P.S.Kuchaicoat, District
Gopalganj

Respondent 2nd Party

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Appearance :

For the Petitioner/s : Mr.Anurag Kr.Sukla, Advocate
Mr.Dhananjay Kr.Tiwari, Advocate
Mr.N.D.Choubey, Advocate

For the Respondent Nos.1 to 6: Mr. Anjani Kumar, AAG 6
Mr.Sanjay Prasad, AC to AAG6

For the Respondent Nos.7 to 9 : Mr.Dhananjay Kr.Tiwari, Advocate
Mr.Vijay Bardhan Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 05-02-2015

Heard learned counsel appearing on behalf of the
petitioner, learned Assistant counsel to Additional Advocate General
6, appearing on behalf of the respondent nos. 1 to 6 as also learned
counsel appearing on behalf of the respondent nos. 7 to 9.

2. The grievance of the petitioner in the present writ
petition is that though by order dated 09.04.2003 passed in Land



Encroachment Case No. 10/2002-03 (Annexure-4) the respondent Circle Officer, Kuchaicot directed for removal of encroachment from the land bearing khata no. 83, Khesra no. 133, area 4 decimals situate at village Nechuakhas, in the district of Gopalganj, yet the encroachment from the land in question has not been removed till date.

3. In fact, this writ petition was earlier heard by a Bench of this Court and was finally disposed of by order dated 11.03.2011 with a direction to execute the aforesaid order dated 09.04.2003 (Annexure-4). The respondent no.7, being aggrieved by the aforesaid order dated 11.03.2011, preferred LPA No.165 of 2014 raising a grievance that though he was a party in the writ proceeding, yet final order has been passed by the writ Court without giving him any opportunity of hearing. Taking into consideration the aforesaid aspects, particularly, the violation of rules of natural justice, the aforesaid LPA No. 165 of 2014 was allowed by an order dated 20.06.2014 passed by a Division Bench of this Court, the order passed by the writ Court was set aside and the matter was remitted to the writ Court to decide the matter afresh, after giving an opportunity of hearing to the parties. Hence, the matter has been listed once again for consideration on merit.

4. After the aforesaid remand order, the respondent nos.7, 8 and 9 have appeared through learned counsel in the present proceeding, but despite opportunity given, they have chosen not to file their counter affidavit. However, it is submitted by learned counsel appearing on behalf of the aforesaid respondents that the land in question is not a public land; rather it was settled in favour of respondent nos. 7 to 9.

5. After hearing the parties, this Court finds that there is a



serious dispute about the validity and correctness of the order passed by the respondent Circle Officer as also about the claim of respondent nos. 7 to 9 with respect to the land in question, but fact remains that an order was passed by the Circle Officer, Kuchaicot for removal of encroachment from the land in question. From the materials available on the record, this Court does not find that the prescribed procedure under the provisions of the Bihar Public Land Encroachment Act, 1956 was followed by the respondent Circle Officer before passing the order dated 09.04.2003 (Annexure-4).

6. In above view of the matter, this Court is of the opinion that the entire matter be examined afresh by the District Collector, Gopalganj. He will examine the matter thoroughly and shall come to a conclusion on the basis of the materials produced by the parties or from the relevant records as to whether the land in question is a public land, or the land in question has been settled in favour of the respondent nos. 7 to 9. He will also examine that if the settlement of the land in question was made by any competent authority/body in favour of the respondent nos. 7 to 9, then as to whether the same is still surviving? If he comes to a conclusion that respondent nos. 7 to 9 have no subsisting valid settlement with respect to the land in question and the land in question is a public land, then he shall issue appropriate direction for removal of the encroachment from the land in question, or alternatively, he shall pass any other appropriate order, which he finds just and proper in the light of the materials produced by the parties.

7. The petitioner as also respondent nos. 7 to 9 are hereby directed to appear before the respondent District Collector, Gopalganj with a certified copy of the present order on 26th February, 2015, whereafter the respondent District Collector shall be obliged to

proceed further in the light of the present order and shall pass appropriate order on consideration of the entire materials at an early date, preferably within a maximum period of three months from the date of appearance of the parties.

8. The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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