

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1646 of 2014

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1. Shidheshwar Sharma S/O Late Lakhan Singh Resident of Village- Dumrawan,
P.S- Pakriwarawan, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate-Cum- Collector, Nawada.
3. The Sub Divisional Officer, Nawada, District- Nawada.
4. The Circle Officer, Pakariwarawan, P.S- Pakariarawan, District- Nawada.
5. Smt. Pramila Devi W/O Nitya Nand Singh, Resident of Village- Dumrawan, P.S-
Pakaribarawan, District- Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hare Krishna Kumar, Adv.
Mr. Devendra Prasad Singh, Adv.
Mr. Uma Kumar, Adv.

For the Respondent/s : Mr. Anil Kumar, GP-23

For the private respondent No.5: Mr. Ram Priya Sharan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-08-2015

Heard learned counsel for the parties.

The petitioner has prayed for a direction to the Circle Officer,
Pakriwarawan in the district of Nawada to take the Encroachment Case No.1 of
2008-09 to its logical conclusion.

It is the complaint of the petitioner that the said encroachment case has
been initiated under the Bihar Land Encroachment Act, 1956 (hereinafter referred
to as 'the Act') at his instance for removal of encroachment from plot of land
bearing Khata no.656 Plot No.2682 admeasuring 2 decimals in Mauza Dumrawan
in the district of Nawada which is registered in the revenue register as 'Anabad
Bihar Sarkar'. According to the petitioner this land has been encroached by the
private respondent.

Mr. Hare Kishna Kumar learned counsel for the petitioner with reference
to the order sheet in the encroachment case present at Annexure-5 has submitted



that although the private respondent No.5 appeared in the proceedings on 10.12.2010 but thereafter she practically abandoned the proceedings and did not choose to file her reply. With reference to the order dated 20.12.2010 he submits that the Circle Officer, Pakaribawaran taking note of the fact that the private respondent had neither appeared nor filed any reply to the charge of encroachment, passed final orders under Section 5(1) of 'the Act' for removal of encroachment. He submits with reference to the order sheet that thereafter although notices have been issued to the private respondent to remove encroachment as well as request had been made for providing police force for removal thereof but the encroachment continues to exist. In the circumstances, it is prayed that the Circle officer be appropriately directed to implement his order by removing the encroachment.

Mr. Ranjeet Kumar A.C. to G.P.27 appears for the State to submit that a civil dispute is running between the parties in a title suit and it is taking note of such circumstances that the matter has been kept pending and the removal of encroachment has not been carried out.

Mr. Kumar learned counsel for the petitioner has submitted that the suit in question bearing Title Suit No. 115 of 2004 has been instituted by the petitioner for declaration of right, title and interest over plot No.2683 and that the plot in question is not the subject matter of the suit. On the other hand defending the respondent No.5, Mr. Ram Priya Sharan Singh, has appeared to submit that the private respondent had purchased the plot in question under a valid sale deed from the land owner and that there is no dispute on her title. It is submitted that the private respondent had approached this Court in C.W.J.C.No.8727 of 2012 and following the liberty granted by this Court that the private respondent has filed an exhaustive application before the Circle Officer, a copy of which has been

annexed as Annexure-D to the counter affidavit filed on behalf of the State and it is taking note of the circumstances that the case has been kept in abeyance.

I have heard learned counsel for the parties and I have perused the materials on record.

Certain factual aspects are undisputed and that is:

- (a) The private respondent did not choose to contest the encroachment proceedings even after registering her appearance on 10.12.2010.
- (b) The final order passed by the Circle Officer on 20.12.2010 and the notice issued pursuant thereto, although was questioned before this Court by the private respondent in C.W.J.C.No.8727 of 2012 but this Court declined to interfere with the order passed in the encroachment proceedings while reserving liberty to the private respondent to take appropriate steps in the suit or other recourse available to her in law.
- (c) Despite the liberty granted by the writ Court, neither the private respondent filed any statutory appeal to question the order passed in the encroachment case nor there is any proceeding pending before the civil court for declaration of the right of the private respondent over plot No.2682; and
- (d) The Title Suit No.115 of 2004 so filed by the petitioner herein does not concern with Plot No.2682.

In the undisputed facts taken note of hereinabove, there was no occasion for the Circle Officer to keep his hands up in implementation of the order passed in the encroachment proceedings more particularly, where the said order is not under challenge before any superior court rather this Court even while granting liberty to the petitioner to question the same before the appropriate forum had declined to interfere with the same.

In the circumstances discussed, the Circle Officer, Pakaribarawan is directed to take the Encroachment Case No.1 of 2008-09 to its logical conclusion within a period of 3 months from the date of receipt/production of a copy of this order. The period of three months may also be utilized by the private respondent to exhaust the liberty so granted to her by the writ Court in C.W.J.C.No.8727 of 2012.

The writ petition is allowed with the direction and observation aforementioned.

(Jyoti Saran, J)

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