

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3875 of 2007

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Ramashray Singh, son of Sheshnath Singh, resident of village- Masaudha, P.S.
Durgawati, Sub Division- Mohania, District- Kaimur (bhabhua)

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Kaimur (Bhabhua)
3. The Sub Divisional Officer, Mohania (Kaimur).
4. The Circle Officer, Mohania (Kaimur)
5. Ramayan Singh son of late Jungi Singh, resident of village Masaudha, P.S.
Durgawati, District- Kaimur (Expunged vide order 14.08.2012 and substituted by
his heirs), namely,
5(a) Bechan Singh
5(b) Bachhan Singh
- 5 (c) Baban Singh, all sons of Ramayan Singh, all resident of village Masaudha, P.S.
Durgawati, District- Kaimur
6. Binod Singh, son of late Ram Nagina Singh, resident of village Masaudha, P.S.
Durgawati, District- Kaimur (Bhabhua)
7. Pramod Singh, son of late Ram Nagina Singh, resident of village Masaudha, P.S.
Durgawati, District- Kaimur (Bhabhua).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kr.Singh
For the Respondent No.1 to 4 : Dr. Anil Kumar Upadhyay, SC-20
Mr. Yashraj Bardhan, AC to SC-20
For the Respondent no. 5(a) to 7: Mr. (Md.) Waliur Rahman
Mr. Nishant Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 20-04-2015

Heard the parties.

The matter at issue is removal of encroachment from the
lands in question, fully detailed in paragraph-1 of the writ petition.

It is not in dispute that a proceeding under Bihar Public
Land Encroachment Act, 1956 was started for removal of
encroachment made by the private respondents, which gave rise to
Case No. 22 of 2002/ 2 of 2003. Aforesaid case was initiated at the
behest of the writ petitioner. The respondent S.D.O., Mohania by his

order dated 14.02.2004 directed for removal of the encroachment from the lands in question. Aforesaid order dated 14.02.2004 has been brought on record as Annexure-2 to the writ petition.

Ramayan Singh, original respondent no.5, who is now dead and has been substituted by his heirs as respondent no. 5(a) to 5(c) as also other private respondents, being aggrieved by the aforesaid order dated 14.02.2004, preferred an appeal before the respondent District Collector, Kaimur (Bhabhua) giving rise to Encroachment Appeal Case No. 9 of 2004-05. After hearing the private respondents, who were appellants before the respondent District Collector as also the present petitioner, the aforesaid appeal was finally dismissed by order dated 16.07.2005 (Annexure-4) and the original order passed by the respondent S.D.O. was affirmed.

The grievance of the writ petitioner is that despite the aforesaid original order as also the appellate order, as contained in Annexure-2 and 4 respectively, encroachment has not been removed from the public land in question.

A counter-affidavit has been filed on behalf of the respondent no. 2 to 4 and in paragraph-14 of the aforesaid counter-affidavit it has been stated that the matter is under process and encroachment is likely to be removed very soon.

A separate counter-affidavit has been filed on behalf of the respondent no. 5(a) wherein it is stated that the private respondents have filed Title Suit No. 3 of 2006. A copy of the plaint has been brought on record as Annexure-A to the counter-affidavit. From perusal of the copy of the plaint this Court finds that the respondent no. 6 and 7 are not party in the aforesaid title suit against whom also orders have been passed for removal of encroachment from the lands in question. This Court further finds that in the aforesaid title suit, the

validity and correctness of orders passed by the respondent S.D.O. as also the District Collector are not the subject matter of challenge. In the counter-affidavit filed on behalf of the respondent no. 5(a) it has nowhere been stated that any order of injunction has been passed by the learned civil court. In above view of the matter, unless and until there is an order of injunction passed by the civil court, respondent no. 5(a) to 5(c) much less the respondent no. 6 and 7, who are not party in the aforesaid title suit, cannot be permitted to resist the implementation of the orders passed by the respondent S.D.O. and affirmed by the respondent District Magistrate, Kaimur (Bhabhua).

In the aforesaid factual matrixes, the petitioner is directed to appear before the respondent District Magistrate, Kaimur (Bhabhua) with a certified copy of the present order within a period of four weeks from today, whereafter the respondent District Magistrate, Kaimur at Bhabhua shall take all possible steps for implementation/execution of the orders passed by the respondent S.D.O. and duly affirmed by him, which have been annexed as Annexure-2 and 4 respectively, within a maximum period of two months from the date of appearance of the petitioner before him. However, if the private respondents obtain any order of injunction from the civil court, then they shall be at liberty to approach the respondent District Magistrate to look into that order and thereafter he shall be at liberty to proceed further in accordance with law.

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

(Birendra Prasad Verma, J)

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