

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16977 of 2014

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Hareshwar Ahir @ Hareshwar Yadav son of Late Ramdhari Yadav, resident
of Navadara, P.O. Navadara, P.S. Dumraon, District-Buxar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
3. The District Magistrate, Buxar
4. The Superintendent of Police, Buxar
5. The Deputy Collector Land Reforms Dumraon, Buxar
6. The Sub-Divisional Officer, Dumraon, Buxar
7. The Circle Officer / Anchaladhikari, Dum

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate

For the Respondent/s : Mr. Nirbhay K. Singh, G.P.-26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 21-01-2015 Heard Mr. Sabir Ahmad, learned counsel appearing on

behalf of the petitioner and Mr. Krishna Kumar, Assisting counsel

to G.P. 26.

The petitioner has questioned the notice dated 11.8.2014
issued by the Circle Officer, Dumraon, District-Buxar as
contained in Annexure-7 to the writ petition.

It is the contention of the petitioner that although the
notice purportedly has been issued in exercise of power vested
under Section 6(2) of the Bihar Public Land Encroachment Act,
1956 (hereinafter referred to as 'the Act') but no such proceeding

under the said Act has been initiated.

The notice is impugned at Annexure-7 to the writ petition and a bare perusal thereof manifests that it is pursuant to an order dated 8.9.2012 passed by the Sub-Divisional Officer, Dumraon in Case No. 33 of 2010 initiated under Section 133 of the Code of Criminal Procedure requiring the petitioner to remove the alleged encroachment from a plot of land bearing Khata No. 1373, Khesra No.229 admeasuring 7 decimals and 60 feet and the failure of the petitioner to carry out the order, that the Circle Officer has issued the notice purportedly under the Act and has also proceeded to remove the encroachment on 3.9.2014.

It is contended by Mr. Ahmad that even when the petitioner claims title and possession over the land in question that the respondent Circle Officer in a most mechanical manner under the Act has proceeded to remove the encroachment. He thus submits that besides that the notice is illegal even the removal of alleged encroachment is an arbitrary exercise of statutory power. Mr. Ahmad has also submitted that the petitioner has questioned the order dated 8.9.2012 passed by the Sub-Divisional Officer in Case No. 33 of 2010 in Criminal Revision No. 137 of 2012 which remains pending before this Court and has also filed Title Suit No. 169 of 1999 for declaration of his title and

possession over the piece of land.

The argument of Mr. Ahmad has been contested by learned counsel for the State and who with reference to the counter affidavit has submitted that the removal has been carried out in pursuance of the order passed in the proceedings drawn against the petitioner under Section 133 of the Code of Criminal Procedure.

I have heard learned counsel for the parties and I have perused the records. The facts are not in dispute and it is not disputed that a proceeding under Section 133 of the Code of Criminal Procedure was drawn against the petitioner for removal of alleged encroachment on a public land, the details of which are given hereinabove in this order giving rise to Case No. 33 of 2010. The Sub-Divisional Officer being satisfied with the nature of the land and that the petitioner has encroached thereon, has by order dated 8.9.2012 present at Annexure-6 to the writ petition, directed the petitioner to remove the encroachment within 15 days, failing which it would be removed by the Circle Officer, Dumraon with administrative support. Although it is the contention of Mr. Ahmad that this order is put to challenge in Criminal Revision No. 137 of 2012 but he fairly admits that there is no injunction as against the respondents. Meaning thereby that even when the Sub-



Divisional Officer has directed the petitioner to remove the obstructions as back as on 8.9.2012, the order has not been stayed and it is almost two years thereafter that the notice in question has been issued by the Circle Officer, Dumraon requiring the petitioner to remove the obstructions and on his failure to do so, that it was removed on 3.9.2014.

In the circumstances discussed where the order of the Sub-Divisional Officer remains in operation, no default can be found in the action taken by the Circle Officer in removing the obstructions. However, while carrying out the order the Circle Officer has inadvertently referred to the provisions of the Bihar Public Land Encroachment Act when the order to be complied has been passed under the provisions of the Code of Criminal Procedure. The reference of the Public Land Encroachment Act in the notice impugned in the present writ petition in no manner would invalidate the action taken by the Circle Officer in removing the obstruction which stands directed under the order dated 8.9.2012 of the Sub-Divisional Officer.

This Court in the circumstances is not persuaded to grant indulgence to the grievance raised by the petitioner. While observing as such this Court would also clarify that this Court has expressed no opinion as regarding the merits of the claim of the

petitioner on the plot in question which is left open for adjudication in the Title Suit as well as in Criminal Revision which remains pending before the different courts.

This writ petition is accordingly disposed of.

(Jyoti Saran, J)

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