

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1417 of 2015

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1. Sudama Prasad, Son of Late Juthan Prasad, Resident of Village - Dighwa,
P.S. - Baikunthpur, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Circle Office, Baikunthpur Block, Gopalganj.
3. The Deputy Collector, Land Reforms, Gopalganj.
4. The District Magistrate, Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Veerendra Narayan, Adv.

For the Respondent/s : Mr. Sanjay Pandey, G.P.21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 04-08-2015 Heard Mr. Kumar Veerendra Narayan, learned counsel for
the petitioner and Mr. Vevek Anand A.C. to G.P.21 for the State.

It is the grievance of the petitioner that a Land Encroachment Proceeding arising from Case No.5 of 2007-08 under the Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') though initiated for removal of the encroachment from public land bearing Khata No. 583 Khesra No. 6053 in village Dighwa in the district of Gopalganj but has not been taken to its logical conclusion by the Circle Officer.

It is the argument of learned counsel for the petitioner that although the Circle Officer discharging duties of a Collector under 'the Act' being satisfied by the encroachment caused by the four persons namely, (1) Hardeo Prasad (2) Subedar Ojha (3) Mohidan Bibi and (4) Kalamuddin Mian, had ordered for removal of



encroachment but he failed to take sufficient steps for ensuring compliance of his own order. It is taking note of the grievance that the matter was adjourned for filing counter affidavit by the Circle Officer which has since been filed and notices have been enclosed at Annexure-B series directing the alleged encroachers to remove the encroachment from the plot in question by 21.7.2015 failing which it would be removed by due process of law. It is submitted that one of the alleged encroachers namely Hardeo Prasad has since filed a title suit bearing Title Suit No. 169 of 2012 for declaration of his title over the area occupied by him on the plot in question on the basis of adverse possession and in which a petition for injunction has also been filed. It is thus submitted that it is in view of the pendency of the title suit filed by Hardeo Prasad in which an injunction petition has also been filed that the matter awaits a final result.

Mr. Kumar Veerendra Narayan while contesting the counter affidavit has submitted that even though one of the encroachers has moved the civil court for declaration of title but there is nothing on record in the proceedings to show whether the other encroachers have also taken recourse to any remedy against the order of encroachment and thus in absence of any contest the Circle Officer should conclude the proceedings.

I have heard learned counsel for the parties and have

perused the materials on record. Taking into consideration the pleadings on record and the response of the Circle Officer as noted herein above, the writ petition is disposed of with a direction to the Circle Officer, Baikunthpur Block, Gopalganj to conclude the encroachment proceedings arising from Encroachment Case No. 5 of 2007-08 in accordance with law.

In so far as Hardeo Prasad is concerned even if the encroachment proceedings may await the outcome of the Title Suit No.169 of 2012, in so far as the other three encroachers namely i.e. (a) Subedar Ojha, (b) Kalamuddin Mian and (c) Mohidan Bibi are concerned the Circle Officer may satisfy himself whether these persons have taken recourse to any remedy before a superior forum and whether any order of stay has been passed. The pendency of the title suit filed by Hardeo Prasad cannot be a reason to keep the matter pending in so far as these persons are concerned.

Let a final decision be taken by the Circle Officer in the light of the observation aforementioned preferably within three months from the date of receipt/production of a copy of this order but after due opportunity to the alleged encroachers to defend their case.

The writ petition is disposed of accordingly.

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(Jyoti Saran, J)