

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12197 of 2015

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1. Triyogi Rai, son of late Bihari Rai.
 2. Lalan Rai, son of late Kalika Rai.

Both are residents of Village- Saini, P.O. - Selari, P.S. - Shivsagar,
District- Rohtas at Sasaram (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Rohtas at Sasaram.
2. The Sub-Divisional Officer, Sasaram, Rohtas.
3. The Deputy Collector Land Reforms, Sasaram, Rohtas.
4. The Circle Officer, Shivsagar, Rohtas.
5. Mathura Kahar, son of late Chaturgun Kahar, resident of Village- Saina, P.O.- Selari, P.S. Shivsagar, District- Rohtas.
6. Shri Kishun Thakur, son of late Sita Thakur, resident of Village- Saina, P.O.- Selari, P.S.- Shivsagar, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr. Fakhruddin Ali Ahmad, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 12-08-2015

Heard Mr. Manoj Kumar, learned counsel appearing
on behalf of the petitioners and learned counsel for the State.

It is the complaint of the petitioners that the private respondents have encroached upon a public land bearing plot nos.377, 378 and 379 at Mauza Saina, P.S. Shivsagar in the district of Rohtas. It is the complaint of the petitioners that initially they filed representation before the Circle Officer, Shivsagar who though directed for enquiry but did not proceed thereafter. A copy of the order dated 5.7.2010 is placed at Annexure-1. The petitioners thereafter invoked the provisions of section 133 of the Code of Criminal Procedure (hereinafter



referred to as 'the Code') and the Circle Officer forwarded the representation of the petitioners for appropriate action and which was registered as miscellaneous case. It is the complaint of the petitioners that although the Sub-divisional Magistrate has directed for removal of the constructions by the private respondents and has also directed the Station House Officer to ensure that no construction takes place vide order passed on 6.7.2013 but it has not been carried out.

I have heard learned counsel for the parties and I have perused the records.

In so far as the petitioners' prayer seeking implementation of the order passed by the Sub-Divisional Magistrate under section 133 of 'the Code' is concerned, the remedy is to be found within 'the Code' itself and not Article 226 of the Constitution of India. However since the petitioners have raised a grievance regarding encroachment on public land by the private respondent and even though the petitioners have taken recourse to the proceeding under section 133 of 'the Code' but that in itself would not preclude the petitioners to take recourse to the remedy available to them under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'). The petitioners if so advised may take recourse to the said

remedy and any such application filed by the petitioners under section 3 of 'the Act' by arraigning the encroachers as party and giving details of the public land as well as the extent of encroachment would be considered and disposed of by the Circle Officer, Shivsagar in accordance with law and after giving opportunity of hearing to the parties including the alleged encroachers.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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