

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1255 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 10645 of 2007

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1. Sheikh Ishrafil S/o Hasmuddin
2. Sheikh Zakir S/o Sheikh Samsuddin
3. Sheikh Makir @ Sheikh Mokir S/o Sheikh Samsuddin
All resident of Village - Mahui, Nauka Tola, P.S. - Ram Nagar, District - West Champaran.

.... Appellant/s

Versus

1. The State of Bihar through the Collector-cum-District Magistrate, West Champaran, Bettiah.
2. The Collector-cum-District Magistrate, West Champaran, Bettiah.
3. The Superintendent of Police, District - Bagaha.
4. The Sub-Divisional Magistrate, Bagaha, West Champaran.
5. The Circle Officer, Ram Nagar Block, West Champaran.
6. The Officer-incharge, Ram Nagar Police Station, District - West Champaran.
7. Sheikh Dhuri S/o Hasmuddin
8. Sheikh Chotta S/o Hasmuddin
9. Sheikh Gias, Sheikh Abulair Chulai, Sheikh Baduri
All resident of Village - Mahui, Nauka Tola, P.S. - Ram Nagar, District - West Champaran.
10. Kolen S/o Sagir Ahmed Resident of Village - Mahui, Nauka Tola, P.S. Ram Nagar, Police District - Bagha, District - West Champaran (Bettiah)

.... Respondent/s

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Appearance :

For the Appellants : Mr. Sanjeev Kumar, Advocate
For the Respondent No. 10 : Mr. Md. Kamaluddin with
Mr. Shashi Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-10-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 20th November, 2013 whereby a direction was issued to ensure that the order passed under the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') is implemented within a period of two months. The said

order dated 29th February, 2008 passed by the Circle Officer in Public Land Encroachment Case No. 16 of 2007-08 under the Act.

Learned counsel for the appellants vehemently argued that there is no order which records a finding that the appellants are encroachers and that no order of removal of encroachment has been passed in terms of the provision under the Act. Learned counsel refers to Annexure-B filed by the State by way of a counter affidavit which shows that proceedings under Section 133 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') was initiated but an order has been passed on 29th February, 2008 that the encroachment has not been removed, thereafter proceeding of removal of encroachment be initiated.

We have heard learned counsel for the parties and find that there is no order of removal of encroachment in terms of the Act. The proceedings appear to have been initiated under Section 133 of the Code but again there is no categorical order of removal of encroachment. A perusal of order dated 29th February, 2008 shows that encroachment has not been removed and therefore, fresh notice be issued but in the absence of any categorical order of returning a finding that the appellants have encroached upon the public land such as *aam rasta*, there could not be any direction for removal of encroachment. Even if such an order is passed under Section 133 of the Code, the appellants would have a right to avail the remedy

against such order in accordance with the provision of the Code.

Thus, We find that the proceedings have been conducted in a perfunctory manner without giving any categorical finding with regard to encroachment by the appellants. Therefore, we set aside the order passed by the learned Single Bench. The official respondents are directed to initiate proceedings of removal of encroachment in accordance with law and pass a speaking order, after giving an opportunity to the persons likely to be affected by such an order. The authorities shall try to pass an order expeditiously, preferably within a period of six months from the date of certified copy of the order is received.

The present Letters Patent Appeal stands disposed off in the aforementioned terms.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	N/A
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