

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9781 of 2017

=====

Vinod Yadav, Son of Sri Prabhu Rai, Resident of Village-Dhabaulia, P.S.-
Chakia, District -East Champaran.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate, East Champaran at Motihari.
3. The Sub Divisional Magistrate, Chakia, District East Champaran
4. The Circle Officer, Chakia, District East Champaran
5. The Senior Superintendent of Police, East Champaran.
6. The Sub-Divisional Police Officer, Chakia, District East Champaran.
7. The Officer In-Charge, Chakia Police Station, District East Champaran
8. Ruplal Rai, Son of Jhaman Rai
9. Bachha Rai, Son of Late Saman Rai,
10. Jokhan Rai, Son of Late Saman Rai, Respondent nos. 8 to 10 are residents of Village-Dhabaulia, P.S. - Chakia, District-East Champaran.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar, Adv.
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 14-11-2017 Heard Mr. Shakti Suman Kumar, learned counsel for the petitioner and Mr. Sajid Salim Khan, learned SC-25 for the respondent-State.

In view of the nature of prayer made in the present Writ application and the nature of order this Court intends to pass, this Court is not inclined either to adjourn the matter any further for filing counter affidavit, or to issue notice to private



respondent nos. 8 to 10.

The present writ application has been filed for a direction to the respondent authorities to implement the order dated 13.06.2016 passed in Encroachment Case No. 09 of 2015-16, by respondent no.4, the Circle Officer, Chakia, as contained in Annexure-2, whereby the encroachment was directed to be removed from the public land appertaining to Khata No. 118, Plot No. 851, Thana No. 87, situated in Village Dhabaulia, District East Champaran at Motihari.

It is submitted by learned counsel for the petitioner that the house of the petitioner is situated in front of the public land in question, but the same has been encroached upon by respondent nos. 8 to 10, by constructing a hut. The public land in question is being used as connecting road to main road. On the application of the petitioner, Encroachment Case No. 09 of 2015-16 was initiated and respondent nos. 8 to 10 were noticed. After receiving measurement report from Circle Amin, respondent no.4, the Circle Officer, Chakia came to know that the encroachment has been made on a public land. Respondent nos. 8 to 10 appeared before respondent no.4, the Circle Officer, Chakia in the said proceeding, but they failed to submit any application with regard to occupation over the public land.



Consequently, respondent no.4, the Circle Officer, Chakia passed final order dated 13.06.2016, in Encroachment Case No. 09 of 2015-16, as contained in Annexure-2, whereby it was declared that respondent nos. 8 to 10 have encroached upon the public land in question and respondent no.3, the Sub-Divisional Officer, Chakia was requested for deputing Magistrate along with police force to get the encroachment removed forcefully. Thereafter, respondent no.4, the Circle Officer, Chakia again requested respondent nos. 3, the Sub-Divisional Officer, Chakia vide letter dated 15.06.2016, as contained in Annexure-3, for deputing the police force for removal of encroachment from the land in question. Consequently, the Sub-divisional Officer, Chakia, vide letter dated 29.06.2016, as contained in Annexure-4, requested the Sub-Divisional Police Officer, Chakia to provide police force for removal of the encroachment. Respondent no.4, the Circle Officer, Chakia, vide letter dated 05.11.2016, as contained in Annexure-5, requested the Officer-in-Charge, Chakia Police Station for providing the police force for removal of the encroachment. Thereafter, respondent no.4, the Circle Officer, Chakia, vide letter dated 20.03.2017, as contained in Annexure-6, again requested the Sub-divisional Officer, Chakia for providing the police force, but despite the



same, the encroachment has not been removed. Hence, the present writ application.

Mr. Sajid Salim Khan, learned SC-25 submits that there is no statement in the writ application that any appeal has been filed against the final order passed by respondent no.4, the Circle Officer, Chakia. If the order passed by respondent no.4, the Circle Officer, Chakia has not been challenged, then it will be implemented, if it has already not been implemented, within a time frame.

This Court is dismayed to find that writ applications are being filed for execution of final order passed by the authorities under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'). Section 7 of the Act provide the power of the Collector under the Act to get encroachment removed and recover the cost of the removal. Section 7 reads as follows:-

“7. Power of the Collector to get encroachment removed and recover cost of the removal-If any person fails to comply with the orders passed by the Collector under section 6 directing the removal of any encroachment by the date fixed, the Collector shall cause the encroachment to be removed in such manner as he deems fit and the cost of such removal shall be recovered from such person.”

The above provision clearly reveals that if any person fails to comply with the orders passed by the Collector under section 6 directing the removal of any encroachment by the date fixed, the Collector shall cause the encroachment to be removed in



such manner as he deems fit and the cost of such removal shall be recovered from such person. Section 6(2) of the Act further provides that if any person does not comply with the order passed by the Collector under the Act, the said person shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs. 20,000/- or with both. Section 6(2) of the Act reads as follows:-

“6(2) If any person does not comply with the orders passed by the Collector under this Section, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs. 20,000/- or with both.”

There is nothing on record to suggest that the Circle Officer, being the Collector under the Act, has resorted to the provisions under Section 6(2) or 7 of the Act, which is simply an application of jurisdiction vested to the Collector under the Act.

However, in view of the present stand of the learned counsel for the State, it is expected from respondent no.2, the Circle Officer, Chakia to implement the final order dated 13.06.2016, passed in Encroachment Case No. 09 of 2015-16, if it has not been challenged/modified/stayed by any superior Court or if it has already not been implemented, within a period of two months after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

Accordingly, with the above observation and direction, the



present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

U			
---	--	--	--

