

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14514 of 2017

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Nageshwar Prasad Singh Son of Late Arjun Prasad Singh Resident of Village
- Dhoni, P.O. - Morama, P.S. - Rajoun, District - Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. The District Magistrate/Collector, Banka, District - Banka.
3. The Deputy Development Commissioner, Banka, District - Banka.
4. The Sub-Divisional Officer, Banka, District - Banka.
5. The Circle Officer/Anchaladhikari, Rajoun, District - Banka.
6. Sri Sharvan Singh
7. Sri Shankar Singh
8. Sri Sunil Singh
9. Sri Bhagwan Singh All are Sons of Musai Singh Resident of Village - Bhusya, P.S. Rajoun, District - Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra
		Mr. Dhananjay Kumar Gupta
For the Respondent/s	:	Mr. Deepak Sahay, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 16-11-2017 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to remove the encroachment from the public land appertaining to Khata No. 251, Plot No. 101, situated in Mauza Bhusiya, P.S. Rajaun, District – Banka which is the subject matter of Encroachment Case No. 4 of 2015-16 wherein notices have been issued to private respondent nos. 6 to 9.

In view of the nature of order this Court intends to pass, this court is not inclined to adjourn the matter for filing counter



affidavit nor to issue notice to the private respondent nos. 6 to 9.

It is submitted by learned counsel for the petitioner that on an application made by the petitioner before the District Magistrate, DCLR, SDM, Banka and Circle officer, Rajaun, Encroachment Case No. 4 of 2015-16 was initiated. The respondent no. 5, Circle Officer, Rajaun issued notice to respondent nos. 6 to 9 and directed the Halka Karmchari, Circle Inspector and Circle Amin to submit measurement report. Subsequently, the Halka Karmchari submitted report dated 29.6.2015, as contained in Annexure 2 to the effect that respondent nos. 6 to 9 have encroached the land in question. Further report along with trace map was submitted on 15.2.2016, as contained in Annexure 3, by the Anchal Amin to the effect that the Government land has been encroached by respondent nos. 6 to 9. Hence, the respondent no. 5, Circle Officer Rajaun, directed for issuance of notice on 19.7.2016 as contained in Annexure 4. Further notice was issued in the aforementioned encroachment case on 22.11.2016, as contained in Annexure 5 series, but till date encroachment has not been removed. Hence, the writ application.

Learned counsel for the Respondent State submits that he is not having any instruction whether encroachment has been



removed or not.

Having heard learned counsel for the parties, there is nothing on record to suggest that any final order under section 6(1) of Bihar Public Land Encroachment Act, 1956 has been passed, though during measurement it was found that encroachment has been made by the respondent nos. 6 to 9 and notices under section 3(1) of the Act have been issued.

Notice under section 6(2) of the Act can only be issued after passing of the final order under section 6(1) of the Act but since final order has not been brought on record, this Court is unable to record a conclusive finding.

If the final order has been passed in the aforementioned encroachment proceeding, the Circle Officer is empowered to implement its own order as provided under section 6(2) of the Act and also by resorting to the provisions of Section 7 of the Act. Sections 6(2) and 7 of the Act read as follows:

“6. Final order of the Collector - (1) In all cases not covered by the provisions to sub-section 3, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such enquiry as he deems necessary the Collector may, as the circumstances of the case require-

(a) either drop the proceeding, or



(b) make the temporary injunction issued under sub-clause (a) of sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or

(e) in the cases not converted by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the



public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector:

Provided if any landless person encroached up to 12 ½ dec. of public land before the 10th October, 1955, no action shall be taken against him under this Act.

(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.2,0000 or with both.”

“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 documents on record do not suggest that the respondent no. 5, Circle Officer, Rajaun has resorted to the



provisions of sections 6(2) or 7 of the Act.

In the circumstances, respondent no. 5, Circle Officer, Rajaun is directed to take the proceeding of Encroachment Case No. 4 of 2015-16, if it has already not been concluded, to its logical conclusion after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act within a period of three months from the date receipt/production of a copy of this order.

(Dinesh Kumar Singh, J)

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