

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.401 of 2017

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1. The Saraswati Complex Residents Association, Patliputra Colony, P.S. - Patliputra, District - Patna represented through its President Ritesh Kumar S/o Late Ramesh Prasad Resident of First Floor, Saraswati Complex, Nehru Nagar, Patliputra, District - Patna.
 2. Sanjeet Kumar S/o Late Suresh Prasad Resident of 405, Saraswati Complex, Nehru Nagar, Patliputra, District - Patna, Secretary of Sarawati Complex residents Association, Patliputra, District - Patna.
 3. The Saryug Complex residents Association, Patliputra, P.S. - Patliputra, District - Patna represented through its Secretary namely Nikhil Kumar Rai S/o Late Mahesh Prasad Resident of First Floor, Saryug Complex, Nehru Nagar, Patliputra, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate.
2. The S.D.O. Patna Sadar, Patna.
3. The D.C.L.R. Patna Sadar, Patna.
4. The Circle Officer, Patna Sadar, Patna.
5. The Officer-in-charge, Patliputra Police Station, Patna.
6. Sidh Nath Yadav S/o Late Kripal Yadav
7. Ranjan Yadav S/o Sidh Nath Yadav
8. Jitendra Yadav S/o Sidh Nath Yadav
9. Rahul Yadav S/o Sidh Nath Yadav All 6 to 9 are residents of Nehru Nagar, Patliputra, in front of Saryug Complex, P.S. Patliputra, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lilawati Singh, Advocate
For the Respondent/s : Mr. Ajay- GA5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-04-2017

Inter alia contending that respondent Nos.6 to 9 have committed encroachment on Government land, they are creating nuisance and obstruction by encroaching upon public land and road, as indicated in the writ petition, and further contending that the



District Magistrate is not initiating proceedings as contemplated under Section 133 of the Cr.P.C. and that the mandate of the law laid down by a Division Bench of this Court in the case of Sanjay Jha Vs. The State of Bihar & Ors., reported in 2016(1) P.L.J.R. 248 is not being followed, this petition has been filed in public interest seeking a *mandamus* to the State Government to remove the encroachment.

Having heard learned counsel for the parties, we find that in the case of Sanjay Jha (supra), a co-ordinate Bench of this Court has held that encroachment can be removed if a case is made out by exercise of the powers available to the Magistrate under Section 133 of the Cr.P.C. and a *mandamus* for the said purpose can always be issued. However, in the case of Sanjay Jha (supra), it was found by the Court that in spite of request made by the Circle Officer and order passed by the Sub-divisional Officer, when the encroachments were not being removed, the order in question was passed.

We have no dispute in accepting the aforesaid proposition of law and, if there is encroachment in a public area, the competent authority is required to take action for removal of the encroachment. But, before taking action, the concerned person should be noticed, they should be heard and thereafter action taken



in accordance with law. Apart from the aforesaid, we find that in the State of Bihar statutory provision under the Bihar Public Land Encroachment Act, 1956 is available and the statutory authority under the aforesaid Act is empowered to remove the encroachment. In the case of Sanjay Jha (supra), it is seen that orders were already passed by the Sub-divisional Officer for removal of encroachment and, therefore, the orders were passed in the said case by the High Court itself. However, in this case, the petitioners have invoked the jurisdiction of this Court and it is seen that they have filed a complaint before the District Magistrate and the D.C.L.R., Patna for removal of the encroachment and it is their grievance that nothing has been done.

Keeping in view the aforesaid, for the present, interest of justice would be met in case respondent Nos.1 to 4 are directed to look into the grievance of the petitioners, issue notice to respondent Nos.6 to 9, hear them and take action for removal of the encroachment, if any, in accordance to law after following the due process. The entire exercise in this regard be completed within a period of six months.

With the aforesaid, the petition stands disposed of. Needless to emphasize that we have not expressed any opinion on the merits of the allegation made in the writ petition and it is for the



statutory authority to examine the allegation made, cause an enquiry into the matter, hear all concerned and thereafter take action, as directed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.4.2017
Transmission Date	N/A

