

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13562 of 2015

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Munna Kumar Son of Sri Shiv Nandan Yada, resident of village- Sugao Tola Dhira
Bigha, P.S.- Makhdumpur in the district of Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue,
Government of Bihar, Patna
2. The Principal Secretary, Department of Revenue, Government of Bihar, Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate-cum-Collector, Jehanabad
5. The Sub-Divisional Magistrate, Jehanabad
6. The Circle Officer, Makhdumpur, Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate.

For the Respondent/s : Mr. Satya Deo Kumar, SC 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and learned AC
to SC 15 for the State.

The present writ application has been preferred for a
direction to the respondent-State for removal of alleged
encroachment from land appertaining to Khata No. 225, Plot No.
1632, measuring an area of about 1.15, acres which is being used as
Aam Rasta of Dhir Bigha village and has been recorded in cadastral
survey Khatian, as contained in Annexure 1, as Gair Mazarua Aam
land.

It is submitted by learned counsel for the petitioner that
the land in question has been encroached by Upendra Yadav and



Rajdeo Yadav since 2009-10 by constructing brick house and for removal of the encroachment, several representations have been filed and ultimately an application was also filed in Janta Darbar of Hon'ble the Chief Minister. The respondent no. 6, i.e., the Circle Officer, vide letter no. 230, dated 26.05.2009, as contained in Annexure 2, directed the Anchal Amin for measurement of land in question in presence of the Circle Inspector and Officer-in-Charge of Makhdumpur Police Station. Consequently, Encroachment Case No. 19 of 2013-14 was initiated. The notice dated 19.10.2013, as contained in Annexure 3, reflects that notice under Section 6(2) of the Bihar Public Land Encroachment Act was issued under the signature of respondent no. 6, directing the encroachers to remove the encroachment by 29.10.2013, otherwise a decision was to be taken for lodging case against them under Section 188 of the IPC, but the encroachment has not been removed in spite of the fact that several representations were submitted before the respondent no. 4, i.e., District Magistrate.

Learned counsel representing the respondent-State submits that he does not have any instruction whether the proceeding of Encroachment Case No. 19-2013-14 has been concluded or whether the encroachment has been removed or not.

The documents on record do not suggest whether any



notice was issued under Section 3 of the Bihar Land Encroachment Act (herein after called the Act) or whether any final order under Section 6 (1) was passed after following the procedure under Sections 4 and 5 of the Act.

Moreover, the counsel for the petitioner has not impleaded the said Upendra Yadav and Rajdeo Yadav i.e., the encroachers as party respondents, hence, no specific direction can be issued without hearing them.

In the circumstances, the writ application is disposed of with a direction to the respondent no. 6, i.e., the Circle Officer, Makhdumpur, Jehanabad to conclude the proceeding of Encroachment Case No. 19 of 2013-14 and if already concluded, implement/execute the final order by resorting to provisions of Sections 6(2) and 7 of the Act, within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity of being heard to the affected persons, provided the final order passed in connection with Encroachment Case No. 19 of 2013-14 has not been either stayed or set aside in any collateral proceeding.

(Dinesh Kumar Singh, J)

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