

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16907 of 2013

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Baban Kumar Singh S/O Late Jagdish Prasad Singh Resident of Mohalla - M.I.G - 90, Housing Board Colony, P.S. - Rampur, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Revenue And Land Reforms, Government of Bihar, Old Secretariat, Patna
3. The Commissioner, Magadh Commissionaire, Gaya, District - Gaya
4. The District Magistrate, Gaya, District - Gaya
5. The Sub Divisional Officer, Sadar, Gaya, District - Gaya
6. The Land Reforms Deputy Commissioner, Gaya, District - Gaya
7. The Circle Officer, Town, Gaya, District - Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAVINDRA KUMAR SINHA

For the Respondent/s : Mr. S.C.-22

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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 S.C.-22 for respondents.

The present writ application has been filed with a prayer for a direction to respondent authorities to remove the encroachment from Government land appertaining to Khata No. 187, Plot No. 161, 459, 578 situated at Mauza Kaler, Thana No. 334 in the District of Gaya.

It is submitted by learned counsel for the petitioner that on the application submitted by the petitioner, the Circle Amin submitted



a report dated 17.08.2007 before the Circle Officer, Town Circle, Gaya, respondent no.7, stipulating therein that four persons namely Ramadhar Singh, Awadesh Singh, Jhuli Singh and Upendra Singh have encroached the land in question. On the basis of the report of Circle Amin, Encroachment Case No. 01 of 2007-08 was initiated. The Circle Officer, Town Circle, Gaya, respondent no.7 issued notice to aforementioned four persons under Section 3 of the Bihar Public Land Encroachment Act (hereinafter called 'the Act') vide order dated 16.08.2007, as contained in Annexure-1. Annexure-2 is the order dated 17.09.2007, passed by the Respondent no.7, which reflects that the show cause dated 10.09.2007 submitted by the alleged encroachers, was considered, but since the alleged encroachers could not substantiate their claim (of residing on the plot in question since last 50 years) by failing to produce any document in this regard, respondent no.7 came to the finding that the Plot No. 161, 459 and 578 being Gairmazarua Anawad Sarvsadharan, which was being used as a public road, has been encroached. Hence, on the basis of the report of the Halka Karmchari and Circle Amin, notices were directed to be issued against the encroachers under Section 6 (1) of the Act directing them to remove the encroachment by 01.10.2007, failing which the encroachment was directed to be removed by force and cost for removal of the encroachment to be realized from the encroachers.



The proceeding under Section 144 Cr. P.C. was also initiated vide Miscellaneous Case No. 752 of 2010 between Baban Kumar Singh and Ramadhar Singh, but the same was converted into a proceeding under Section 133 Cr. P.C. vide order dated 03.06.2010, as contained in Annexure-3, passed by Sub-Divisional Officer, Sadar Gaya, respondent no.5. Since the issue relates to encroachment which requires leading of evidence, hence the parties were directed to produce evidence. Consequently vide order dated 10.06.2011, as contained in Annexure-4, Sub-Divisional Officer, respondent no.5 directed respondent no. 7, Circle Officer for physical verification of the land in question from Khatiyani and the map and transmit necessary information after removal of the encroachment.

It is further submitted that till date the encroachment has not been removed. Though, representations for removal of the same was submitted on 29.08.2011 to the Commissioner, Magadh Division, Gaya, as contained in Annexure-5, and Circle Officer, Town Circle, Gaya on 20.05.2013, as contained in Annexure-6 but even then the alleged encroachment has not been removed.

From the counter affidavit filed on behalf of the respondent nos. 1 to 7, it appears that C.W.J.C. No. 10535 of 2014 was filed by the encroachers challenging the notice under Section 3 of the Act issued in Encroachment Case No. 01 of 2007-08, which was



disposed of vide order dated 22.07.2014 giving liberty to the encroachers/the petitioner of the said writ application to avail the remedy of appeal. Consequently, Encroachment Appeal No. 04 of 2014 was filed against the issuance of notice in Encroachment Case No. 01 of 2007-08 before the District Magistrate, Gaya. Though, the counter affidavit filed on behalf of respondent nos. 4 to 7 in the year 2015 suggests that the said Appeal is still pending but the counsel for the petitioner has produced the certified copy of the order dated 30.04.2015 passed by the District Magistrate, Gaya in Encroachment Case No. 04 of 2014, which suggests that the Encroachment Appeal has been dismissed, let it be kept on record.

Learned counsel for the respondent-State submits that if encroachment has not removed till date, then authorities will implement/execute the order passed in Encroachment Case No. 01 of 2007-08 within a fixed time frame.

Considering the rival submissions of the parties, it appears that the petitioner has not made the so-called encroachers as party respondents, hence no specific directions can be made against them but the materials on record suggest the sordid state of affairs, particularly the way in which the encroachment proceedings are being conducted and orders are being passed by the District Magistrate, Sub-Divisional Magistrate and Circle Officer. The order-sheet of



Encroachment Case No. 01 of 2007-08 does not suggest that provisions of Sections 4 and 5 of the Act were followed. There is nothing on record to suggest the date on which the final order under Section 6 (1) of the Act was passed by the Circle Officer. The Appellate order dated 30.04.2015 passed by the District Magistrate, Gaya in Encroachment Case No. 04 of 2014 suggests the casual manner in which the District Magistrate has passed the order. The Encroachment Appeal No. 04 of 2014 was preferred by Awadhesh Singh against the final order passed by Circle Officer in Encroachment Case No. 01 of 2007-08 but the certified copy of the order dated 30.04.2015 passed by District Magistrate reflects that it has been passed in Encroachment Case No. 04 of 2014 instead of Encroachment Appeal No. 04 of 2014. The entire order dated 30.04.2015 passed in Encroachment Appeal No. 04 of 2014 does not specify as against which order, the appeal was filed, as no date of final order under Section 6(1) of the Act passed by respondent no.7 has been mentioned either in the writ application or in the counter affidavit filed by respondent-State or in the Appellate order dated 30.04.2015 passed by the District Magistrate in Encroachment Appeal No. 4 of 2014, which suggest the callous manner in which the quasi judicial functions are being discharged by the concerned Authorities.

This Court is dismayed to find that the encroachment



proceeding was initiated in the year 2007-08 and even after conclusion of the proceeding, encroachment has not been removed from the public road, till date. Respondent no.5 initiated proceeding under Section 144 Cr. P.C. and subsequently converted the same into 133 Cr. P.C. proceeding but failed to discharge his duties as entrusted upon him under the provisions of Section 133 of the Cr. P.C.

In the circumstances, the writ application is disposed of with a direction to respondent authorities particularly the respondent nos. 4, 5 and 7 to see that the final order passed in Encroachment Case No. 01 of 2007-08 be executed or implemented by resorting to the provisions of Sections 6(2) and 7 of the Act, after giving due opportunity of being heard to all the affected persons within a period of six weeks, provided the final order has not been stayed or annulled in any collateral proceeding.

With the above observation, this application is disposed of.

Let the order be transmitted to respondent nos. 4, 5 and 7 through E-mail.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08/05/2017
Transmission Date	N/A

