

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18424 of 2014

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Ram Yatan Sharma, Son of Late Satti Singh, Resident of Village - Sonwa, Police Station - Ghosi, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Department of Government of Bihar, Patna.
2. The Secretary, Primary Education, Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Jehanabad.
5. The Sub-Divisional Officer, Jehanabad.
6. The Block Development Officer Ghosi, Jehanabad.
7. The Circle Officer Ghosi, Jehanabad.
8. The District Education Officer, Jehanabad.
9. Arvind Kumar, Son of Late Jainandan Singh, Resident of Village - Sonwa, Police Station - Ghosi, District- Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh
Mr. Pramod Kumar, Advocates
For the Respondent/s : Mrs. Archana Meenakshi, GP - 6

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 21-08-2017

Heard learned counsels for the parties.

Since the writ application was filed in 2014 and no counter affidavit has been filed as yet, this Court is not inclined to adjourn the matter any further. This Court is also not inclined to issue notice to the private respondent no. 9 in view of the nature of the order this Court intends to pass.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment



removed from the part of the land of Up-graded Middle School, Sonwa appertaining to Khata No. 17, Plot No. 1339 situated in Village – Sonwa, P.S. Ghoshi in the district of Jehanabad. A prayer has also been made for direction to the respondent no. 4, the District Magistrate, Jehanabad to initiate appropriate proceeding against the private respondent.

It is submitted by learned counsel for the petitioner that the school in question is situated in village Sonwa under Ghoshi Police Station in the district of Jehanabad. The petitioner is the resident of Sonwa village. The total area of the land over which the school is situated is 15 decimals, whereas over ten decimals of the land, the school building is constructed and remaining five decimals of the land is vacant. The land in question is recorded in the Khatian, as contained in Annexure 1, as Education Department, Government of Bihar. The construction over five decimals of the land of the school by the respondent no. 9 led to the filing of I.A. No. 2939 of 2015 with a prayer for a direction to the respondent State to stop any further construction over the land in question.

The petitioner and other villagers made representations before the Sub Divisional Officer, Jehanabad, Block Development Officer, Jehanabad and Circle Officer,



Ghoshi, Respondent nos. 5,6 and 7 respectively on 24.8.2014, as contained in Annexure 2. Subsequently, representations were also submitted before the District Magistrate, Jehanabad, Commissioner, Magadh Division and the Chief Secretary, Government of Bihar, and such representations have been brought on record as Annexure 3 series. It is further submitted by learned counsel for the petitioner that the Apex Court in the case of Jagpal Singh and Ors. Vs. State of Punjab and Ors., reported in AIR 2011 SC 1123 (Punjab) has categorically directed for removal of the illegal and unauthorized encroachment from the public land appertaining to Gram Panchayats and in this connection specific direction was given to the State Governments in the country. Paragraph 22 of the judgment reads as follows:

‘22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamalat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of the villagers of the village. For this purpose Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupants after giving him a show cause notice and a



brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of scheduled castes/scheduled tribes, or where there is already a school, dispensary or other public utility on the land.”

It appears that in spite of continuous efforts made by the petitioner, neither a proceeding under Bihar Public Land Encroachment Act (hereinafter referred to as the ‘Act’) has been initiated nor the encroachment has been removed, as a result, the present writ application has been filed.

Learned counsel for the respondent-State submits that at present, she is having no instruction whether the encroachment has been removed from the land in question or not. She is not in a position to controvert the submissions of learned counsel for the petitioner in view of the entry made in Khatiyani, as contained in Annexure 1 that the land in question is not a public land.

Considering the rival submissions of the parties, this



Court is of the view that for initiating a proceeding under the Act, it should appear to the Collector under the Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, in the present case, the petitioner represented before the S.D.O., Jehanabad, Block Development Officer, Ghoshi, Circle Officer, Ghoshi and District Magistrate, Jehanabad as far back as in 2014, but this Court is dismayed to find that there is nothing on record to suggest that the respondent authorities, particularly, respondent no. 7, the Circle Officer, Ghoshi, who is Collector under the Act, has come forward to discharge quasi judicial function.

In the circumstances, respondent no. 7, the Circle Officer, Ghoshi is directed to examine the representation filed by the petitioner before him or to examine the case after visiting the land in question and to verify the entry made in the Khatiyan with regard to the land in question and if it appears to him being Collector under the Act that there is an encroachment on the land in question, then, he will forthwith, initiate an encroachment proceeding and will take it to its logical conclusion within a period of three months from the date of receipt/production of a copy of



this order, after giving due notice to all affected persons, in accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Anil/-

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CAV DATE	
Uploading Date	
Transmission Date	

