

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14281 of 2015

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Mithilesh Kumar, son of Late D.N. Mahto, Resident of Village Goddih, P.O. Sarmera, P.S. Barbnigha, District- Sheikhpura

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Sheikhpura, District- Sheikhpura
3. The Deputy Collector Land Reforms, Sheikhpura, Dist. Sheikhpura
4. The Circle Officer, Barbiga Circle, District Sheikhpura
5. Anil Kumar, son of Late Sadashiv Mahto, Resident of Village Goddih, P.O. Sarmera, P.S. Barbnigha, District- Sheikhpura

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Sinha, Adv. Mrs. Rekha Kumar, Adv.
For the State	:	Ms. Shilpi Keshri, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-10-2017

Heard Mr. Satish Kumar Sinha, learned Counsel appearing on behalf of the petitioner and Ms. Shilpi Keshri, learned AC to AAG-10, appearing on behalf of the respondent - State.

This Court is not inclined to issue notice to private respondent no.5, Anil Kumar, in view of the nature of order this Court intends to pass.

The present Writ application has been filed for a direction to the respondent authorities to remove the encroachment from the land appertaining to Plot No.209, situated in Village -Goddih, P.O. Sarmera, P.S.-Barbiga, District – Sheikhpura, being public street which has been encroached upon by



respondent no.5, Anil Kumar.

It is submitted by learned Counsel appearing on behalf of the petitioner that plot no.209 is a public street situated in Village -Goddih, P.O. Sarmera, P.S.-Barbigha, District-Sheikhpura and plot no. 210 is adjacent to the aforementioned plot which belongs to the petitioner and on which the petitioner's residential house is situated, but since Plot No. 209 has been encroached upon substantially by construction of wall by respondent no.5, hence, ingress and egress of the petitioner has been obstructed. The petitioner submitted a representation through speed post on 28.06.2014, as contained in Annexure-1, before respondent no.3, the Deputy Collector Land Reforms, Sheikhpura, for removal of the encroachment from the land in question. Thereafter, reminder was sent by the petitioner on 18.08.2014, through speed post, as contained in Annexure-2. The petitioner transmitted a copy of the representation to the respondent no.2, the District Magistrate, Sheikhpura, through speed post on 24.11.2014 and to respondent no.4, the Circle Officer, Barbigha on 27.11.2014, as contained in Annexure-3, but till date no action has been taken.

It is submitted by learned Counsel appearing on behalf of the respondent State that in pursuance to the representation



submitted by the petitioner, respondent no.3, the Deputy Collector Land Reforms, Sheikhpura called for a report vide letter no.1745, dated 16.07.2014 from respondent no.4, the Circle Officer, Barbigha. Consequently, the Circle Officer submitted the report vide, letter no. 693, dated 07.08.2014, to the Deputy Collector, District Public Grievance Cell, Sheikhpura, after getting the land verified and enquired through the Revenue Clerk, suggesting therein that Plot No.209 is a public street and the same has been encroached upon by respondent no.5. Consequently, Encroachment Case No. 04/2015-16 has been initiated wherein notices were issued to the encroacher vide Memo No. 490, dated 12.06.2015. Hence, it cannot be said that action has not been taken.

Considering the rival submissions of the parties though it appears from Annexure-D that a notices has been issued to respondent no.5 by respondent no.4, the Circle Officer, Barbigha, under the provisions of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') directing him to remove the encroachment from the land in question within fifteen days and submit a report to that effect by 13.08.2017. But the counter affidavit does not contain the final order passed under Section 6(1) of the Act.



There are two provisions under the Act, which are prescribed for implementation or execution of the final order and action being taken in case of non-compliance of the final order. Those provisions are Section 6(2) and 7 of the Act, which read as under :-

“6(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.20000/- 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.”

Section 6(2) of the Act clearly envisages that if any person does not comply with the orders passed by the Collector under the Act, he shall be punished with imprisonment for a term which may extend to one year or with fine up to Rs.20,000/- or with both, whereas, Section 7 of the Act prescribes the power of the Collector to get the encroachment removed and to recover the cost of removal of encroachment.



In the circumstances, respondent no.4, the Circle Officer, Barbigha, is directed to take the proceeding of Encroachment Case No.04/2015-16 to its logical conclusion after passing final order, if it has not already been passed, within a period of three months, after giving due opportunity of hearing to all affected persons under the provisions of the Act.

The Writ application is, accordingly, disposed of with the above observation and direction.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

