

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15834 of 2013**

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Rama Nand Sharma, Son of Late Munshi Sharma, Resident of Village -  
Sikandarpur, Police Station - Bihta, District - Patna

.... .... Petitioner

Versus

1. The State of Bihar, Through The Chief Secretary, Govt. of Bihar, Old  
Secretariat Building, Patna
2. The District Magistrate, Patna, District - Patna
3. The Sub - Divisional Officer, Danapur
4. The Circle Officer - Cum - Block Development Officer, Bihta
5. Ram Pravesh Singh Son of Late Baleshwar Singh, Resident of Village –  
Sikandarpur, Police Station - Bihta, District - Patna
6. Naulak Sharma Son of Late Baleshwar Singh, Resident of Village –  
Sikandarpur, Police Station - Bihta, District - Patna
7. Shree Bhagwan Singh Son of Late Baleshwar Singh, Resident of Village –  
Sikandarpur, Police Station - Bihta, District - Patna
8. Ram Balak Sharma Son of Kanhaiya Singh, Resident of Village - Sikandarpur,  
Police Station - Bihta, District - Patna
9. Rajeshwar Sharma Son of Kanhaiya Singh, Resident of Village - Sikandarpur,  
Police Station - Bihta, District - Patna
10. Sidh Nath Sharma Son of Kanhaiya Singh Resident of Village - Sikandarpur,  
Police Station - Bihta, District - Patna

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Anil Kumar Dwivedi, Adv.  
For the Respondent no. 1 to 4 : Mr. A.C. to G.P.-9

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL JUDGMENT**

**Date: 03-05-2017**

Heard learned counsel for the petitioner and learned  
A.C. to G.P.-9 for respondent nos. 1 to 4.

The present writ application has been filed for a  
direction to the respondent authorities to implement the order dated  
17.03.2006, passed by the Sub-divisional Officer, Danapur, in Case  
No. 134(M) of 2005, under Section 133 Cr. P.C., whereby Sub-



divisional Officer, Danapur, respondent no.3, has directed the Circle Officer, Bihta, respondent no.4, to remove the encroachment, if any, from the land appertaining to Plot No. 471, Khata No. 99, situated in Sikandarpur Village in Patna District, if the said land is a public land and to recover the cost of removal of encroachment from the encroachers.

It is submitted by the learned counsel for the petitioner that the land appertaining to Plot No. 471, Khata No. 99 situated in Sikandarpur Village in Patna District is recorded in the Revisional Survey as well as in Cadestral Survey as Gairmajarua Aam land which was used as 'Payin' and Aam Rasta, but the same has been encroached upon by respondent nos. 5 to 10. On the basis of report of Halka Karmchari and Circle Officer, the Sub-divisional Officer, Danapur vide order dated 03.05.2005, passed in Case No. 134M of 2005, initiated proceeding under Section 133 Cr. P.C. and also directed respondent no.5 and others to remove the encroachment from the land in question. Ultimately, vide order dated 17.03.2006, Sub-divisional Officer, Danapur, respondent no.3, directed the Circle Officer, Bihta, respondent no.4, to remove the encroachment from the land in question if the said land is a public land and to recover the cost of removal of encroachment from the encroachers, but the said order has not been implemented/executed till date. Though, Encroachment



Case No. 03 of 2006-07 was also initiated with regard to same land and notices were issued, but the said proceeding was also not taken to its logical conclusion.

Learned A.C. to G.A.-9 submits that the present writ application is not maintainable since the petitioner has come against an order passed under Section 133 Cr. P.C., and the said order dated 17.03.2017, passed in Case No. 134M of 2005, was challenged by respondent no.5 and others in Cr. Rev. No. 267 of 2006, which was dismissed on 27.03.2006, by learned Sessions Judge, Patna by recording that the order of Sub-divisional Officer was conditioned whereby he directed the Circle Officer to remove the encroachment if the land in question is a public land.

No doubt the present writ application, filed with a prayer to implement the order passed in a proceeding under Section 133 Cr. P.C., is absolutely misconceived in view of the fact that Criminal Revision No. 267 of 2006 was filed for the same relief. However, the learned Sub-divisional Officer, vide order dated 17.03.2017, passed in Case No. 134M of 2005, directed the Circle Officer to remove the encroachment, if the land in question is a public land. The Circle Officer being Collector under the provisions of the Bihar Public Land Encroachment Act, can decide whether a land is a public land or not only by resorting to the provisions of Bihar Public



Land Encroachment Act.

It appears that Encroachment Case No. 3 of 2006-07 was initiated with regard to land in question.

From perusal of the order dated 03.07.2007, as contained in Annexure-7, passed in Encroachment Case No. 03 of 2006-07, it appears that the proceeding of encroachment case has been stayed, awaiting the judgment in title suit, as with regard to same land, Title Suit No. 161 of 2006 is pending.

It is well settled legal proposition that where there is a dispute with regard to title, which cannot be resolved without leading of evidence, the discretionary jurisdiction under Article 226 of the Constitution of India cannot be exercised.

In view of the fact that the present writ application has been preferred on the basis of serious disputed questions of fact, the same cannot be decided in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. A useful reference may be made to the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors. (2009) 1 Supreme Court Cases 168** wherein the Apex Court has laid down the parameter for exercising the jurisdiction under Article 226 of the Constitution of India. Paragraph no.30 of the judgment reads as follows:-



“The court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of Limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.”

In view of the above settled legal proposition, this Court cannot exercise the discretionary jurisdiction under Article 226 of the Constitution of India, considering the nature of grievance and in view of the pending title suit.

Accordingly, the present writ application is disposed of.

**(Dinesh Kumar Singh, J)**

Amrendra/-

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